

FHWA-97-2435-2

BEFORE THE FEDERAL HIGHWAY ADMINISTRATION
OFFICE OF MOTOR CARRIERS

In the Matter of

:

QA 22483

BO-MARK TRANSPORT, INC.

:

Case No. GA-94-111-566

Respondent.

:

89 pgs.

RESPONDENT'S RESPONSE TO MOTION FOR FINAL ORDER

Comes now Bo-Mark Transport, Inc., Respondent in the above-captioned matter (hereinafter "Bo-Mark" or "the Company"), and responds to the Regional Director's Motion For Final Order as follows:

INTRODUCTION

The Motion For Final Order filed by the Federal Highway Administration (FHWA) in this case does not show that no factual disputes remain. Instead, it simply presents FHWA's argument that their factual position regarding the severity of these violations and the culpability of this carrier are correct and that the carrier's factual positions are incorrect. Such an argument is not sufficient to deny a carrier an administrative hearing.

FHWA's motion further asks that the assumption be made that the violations on this particular enforcement action are the same as previous violations by this carrier. However, no factual support for that position is made.

Contrary to FHWA's position, a number of factual disputes remain between the position of FHWA and Bo-Mark: (1) whether a number of the violations were in fact due to "good faith misunderstandings" of the regulations; (2) whether the facts of this review constitute an "extreme degree of culpability"; (3)

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whether the management of Bo-Mark lacked a commitment to safety; and (4) whether mitigating circumstances did in fact exist. The existence of each of these factual disputes is further shown below.

FACTUAL BACKGROUND

Bo-Mark was previously the subject of a compliance review on August 27, 1993. As a result of that review, Bo-Mark signed a Consent Order on November 19, 1993. That Consent Order remained in effect for six months from the date of execution, through May 19, 1994.

In response to the August, 1993 compliance review, Bo-Mark substantially reorganized its manner of doing business. (Affidavit of John R. Phillips, President of Bo-Mark, par. 1, (hereinafter "Phillips Affidavit" attached hereto as Exhibit "A"))¹. In addition, Bo-Mark maintained regular contact with FHWA regarding its efforts to comply with federal regulations. (Phillips Affidavit, par. 1). FHWA, in spite of requests from Bo-Mark, did not come back to audit Bo-Mark's activities until September, 1994 - approximately three and one-half months after the Consent Order had expired.

During and after the compliance review of September, 1994, Special Agent Marlow assured Bo-Mark that its "efforts to improve

¹This Affidavit of John R. Phillips was originally prepared and signed in response to FHWA's Out-of-Service Order in September, 1994. Because the original was never filed with the federal court, and because it reflects the position of Bo-Mark presented to FHWA at the time of the dispute, the Affidavit is being submitted here in response to FHWA's motion.

in accordance with the other compliance review were commendable". (Phillips Affidavit, par. 1).

Contrary to the representation by Special Agent Marlow of Bo-Mark's commendable efforts, on September 15, 1994, FHWA served Bo-Mark with an Out-of-Service Order. In response to the Out-of-Service Order, and in connection with obtaining conditional recession of the Out-of-Service Order, Bo-Mark presented to FHWA substantial documentation regarding the actions taken for the Company to comply with federal regulations. (Exhibits "B" through "E"). The Out-of-Service Order was rescinded conditionally by FHWA on September 16, 1994, (one day after it was issued) at 3:02 p.m. (See Exhibit "F" attached hereto).

ARGUMENT AND CITATION OF AUTHORITY

I. WHETHER THE ALLEGED CONSENT ORDER VIOLATIONS AND FALSE LOG VIOLATIONS RESULTED FROM "GOOD FAITH MISTAKES" OR A LACK OF SAFETY COMMITMENT FROM MANAGEMENT.

FHWA argues that maximum penalties should be imposed on all violations in the subject review because (1) Consent Order violations were involved; and (2) Bo-Mark had previously been cited for similar violations. For these reasons, FHWA contends that Bo-Mark's argument of "good faith mistake" cannot be considered a factual dispute. FHWA further contends that these circumstances support an extreme degree of culpability and a finding that Bo-Mark's management lacked a commitment to safety.

A careful review of FHWA's motion, however, shows that they have not presented proper evidence that the violations cited on this review were in fact similar to those of previous reviews.

Additionally, this position by FHWA really asks this administration to weigh the factual positions of the two parties. This cannot be done to deny an administrative hearing.

First, on the issue of prior similar violations and culpability, FHWA contends that the false log violations documented in March, 1994, occurred during a time in which a Consent Order was in place.² The Consent Order, however, only generally required Bo-Mark to "require all drivers to prepare complete and accurate daily records of duty status for each 24-hour period". There is no indication in the record submitted by FHWA that the Consent Order provision was in any way related to the types of log violations alleged in the September, 1994, compliance review.

In fact, the only "similar violation" FHWA could find to dispute Bo-Mark's claim of "good faith misunderstanding" was a 1991 compliance review which evidenced one violation (out of 56 checked) of a "100 air-mile radius driver who worked fourteen hours". (Government Exhibit "G"). Of course, a careful review of that full Exhibit will show that not a single recommendation was made by FHWA regarding that alleged violation. More importantly, there is not sufficient factual information presented to determine whether that alleged violation in fact was the same circumstances as those alleged in the 1994 compliance review.

This failure to present adequate information must be

²As show above, the Consent Order expired three and one-half months before this review took place, and the violations were dated six months before the review.

considered in light of the confusion constantly existing in connection with the 100 air-mile radius exemption provided by 49 C.F.R. § 395.1(e). This is certainly not the first carrier counseled by this firm to have misunderstood this exemption, and it is likely that other carriers have experienced the same confusion before the administration.

In addition, Bo-Mark has set forth a factual contention that many of these violations were due to a good faith mistake (Government Exhibit "B"). Bo-Mark denies that previous violations involved the same issues, and have submitted that they, in good faith, were unaware that certain actions were violations of the federal regulations. (Government Exhibit "B"). While the FHWA does not agree with this factual contention, and may have evidence to submit that it is untrue, this does not meet the level of there being no "factual dispute". Just as FHWA may have evidence to argue there was not a good faith mistake, Bo-Mark has factual information to support its position. (See generally, Phillips Affidavit, par. 1).

FHWA made a factual determination that there were previous penalties for similar violations, which it then determined resulted in an extreme degree of culpability and a lack of management commitment to safety. Further, FHWA based the penalties in this case on such factual determinations. Bo-Mark disputes those factual determinations. As this administration has previously recognized, when the assessment of a penalty "rests on factual findings susceptible to challenge", the respondent should be

entitled to an administrative hearing on such matters. (Order Appointing Administrative Law Judge, in the matter of Olin Wooten Transport Co., Inc. (Docket No. 92-GA-050-SASV and Docket No. GA-93-045-449, June 16, 1994, a copy of which is attached hereto as Exhibit "G". See also, Order Denying Motion for Summary Judgment, in the matter of Olin Wooten Transport Co., Inc. (Docket No. 92-GA-050-SASV, October 5, 1994, a copy of which is attached hereto as Exhibit "H".)

II. BO-MARK DISPUTES THE FACTUAL DETERMINATION OF AN EXTREME DEGREE OF CULPABILITY AND LACK OF MANAGEMENT'S COMMITMENT TO SAFETY.

Once again, the position of FHWA is that their factual determination that an extreme degree of culpability existed and that this Company's management totally lacked a commitment to safety, are the only facts in this record. This is not the case. As shown in the Affidavit of John R. Phillips, President of Bo-Mark, the Company made substantial efforts to respond to the previous compliance review, including regular contact with FHWA. (Phillips Affidavit, par. 1). In fact, after the subject compliance review, Special Agent Marlow, who now says this Company lacked a commitment to safety, told the Company that their efforts were "commendable". (Phillips Affidavit, par. 1). A dispute obviously exists as to the very factual determinations upon which FHWA based its penalties in this case. For these reasons alone, Bo-Mark is entitled to an administrative hearing.

III. MITIGATING CIRCUMSTANCES DID EXIST IN THIS CASE WHICH SHOULD HAVE BEEN INCLUDED IN FHWA'S DETERMINATIONS.

FHWA's file on this carrier contains substantial information regarding the improvements made to their safety program in connection with this compliance review, the Out-of-Service Order, and the subsequent rescission of that Order. (See Exhibits "B" - "E"). This administration has made it quite clear that such improvements may be considered in reduction of a civil penalty. In the matter of Tonawanda Tank Transport Service, Inc., 55 Fed. Reg. 43279 (July 5, 1990); In the matter of Drotzmann, Inc., 55 Fed. Reg. 2929, 2930 (September 20, 1989); Order denying motion for summary judgment, Olin Wooten Transport Company, Inc., Docket Nos. 92GA-050-SASZ and GA-93-045-449, October 5, 1994 (Exhibit "H" attached hereto).

Also, the guidelines for assessment, filed by the Government as Exhibit "F", point out that "a major factor" to be considered are issues such as "revision of a safety program", "comprehensiveness of corrective action" and "speed of compliance". (Government Exhibit "F", p. A-10). The decision by FHWA shows no consideration of these factors. Yet, the record as a whole shows substantial revisions to Bo-Mark's safety programs. It further shows speedy action on the part of Bo-Mark to the point that the Out-of-Service Order was rescinded within almost 24 hours. Both the guidelines and the case law show that it was improper for FHWA to ignore these factors in its assessment of penalties.

CONCLUSION

Bo-Mark has raised a number of factual disputes as to whether FHWA based its assessment of the penalty on a proper factual basis. In addition, Bo-Mark has shown that imposition of the maximum penalties in this case is not warranted and is not consistent with the Government's own guidelines. FHWA's failure to consider certain factors, such as corrective action taken by Bo-Mark, is simply improper. For all of these reasons, the Regional Director's Motion For Final Order must be denied and Bo-Mark must be allowed an administrative hearing on this incident.

This 4th day of March, 1996.

Respectfully submitted,

CARR, TABB & POPE

By:



W. Pitts Carr
Georgia Bar No. 112100
J. Renée Kastanakis
Georgia Bar No. 408599

1355 Peachtree Street, N.E.
Suite 2000
Atlanta, Georgia 30309
(404) 876-7790
Fax (404) 873-4683

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF GEORGIA
ATLANTA DIVISION

BO-MARK TRANSPORT, INC.,	:	
	:	
Plaintiff,	:	
	:	CIVIL ACTION
v.	:	
	:	FILE NO. _____
FEDERAL HIGHWAY ADMINISTRATION,	:	
DARRELL C. GREGORY, Individually	:	
and in his capacity as Regional	:	
Director of the Federal Highway	:	
Administration,	:	
	:	
Defendants.	:	

VERIFICATION AND AFFIDAVIT OF JOHN R. PHILLIPS

Personally appeared before the undersigned, an officer duly authorized to administer oaths, JOHN R. PHILLIPS, on personal knowledge, and after being duly sworn, upon oath, stated as follows:

1.

I am the owner and President of the plaintiff in this case. On August 27, 1993, Bo-Mark Transport, Inc. was the subject of a FHWA Compliance Review which resulted in a number of charges which were answered in writing in great detail by the involved companies. At that time, Bo-Mark acknowledged its misunderstanding of the relevant regulations, paid a fine of \$24,000, and substantially reorganized its manner of doing business. Bo-Mark maintained regular contact with the FHWA regarding its efforts to come into compliance, and even went so far as to invite the FHWA to visit its facilities in Savannah and audit its operations to ensure compliance. We had no further contact from FHWA until approximately September 6, 1994, when a follow-up compliance review

was had. This was completed on Friday, September 9, 1994. We were assured by Mr. Tom Marlow, Special Agent of FHWA that our efforts to improve in accordance with the other compliance review were commendable. We received no specific criticism other than those attached as Exhibit I and proceeded to conduct our operations in accordance with what we understood to be what FHWA expected to see.

2.

Not until the morning of September 15, 1994, at approximately 9:30 a.m. were we advised by FHWA of any significant issue that we were not in compliance with any of the DOT regulations and requirements.

3.

At this time, we were served with the out-of-service order attached as Exhibit "A" to the Verified Complaint.

4.

I have reviewed the Verified Complaint and brief in support of the motion for temporary and preliminary injunctive relief and show that the factual basis in those are known to me to be true and correct of my own personal knowledge.

5.

In our filings with the Department, which I understand will be made available to the Court, we provided an exhaustive detail of the steps taken by the company to address the issues raised by FHWA. The company presently has in place computerized systems for supervision of logs and vehicle maintenance, and is presently computerizing its dispatch system. This computer operation will

result in the ready determination as to any driver that is not in compliance so to avoid dispatch. The computer would put a driver off dispatch if he did not have available hours of service, the vehicle has not been inspected in accordance with the quarterly inspection program, the driver is out of specification regarding physicals, drug screens, annual reviews; or logs that are not in as required. The cost of the hardware and software and staffing to bring this computer system up to speed is approximately \$125,000.00.

6.

Further, we have retained on an ongoing basis the services of a transportation safety director, whose sole responsibility for the companies is to assure compliance with DOT regulations and assist the company in developing practices and procedures that will keep it in compliance.

7.

Further, each dispatcher is required to verify from the driver his current hours of available service before dispatch. This includes both a ten-hour rule and the seventy-hour rule. When a computerization process is complete, which is expected to be in the very near future, we will be able to keep track of drivers' hours of service by computer and eliminate to the extent possible the element of human error or miscalculation.

8.

Also, we have employed the services of a log clerk, whose sole responsibility is to help us verify the accuracy of drivers' logs

by checking its fuel purchase reports, fuel receipts and other trip documents.

9.

The company is totally committed to the development and maintaining of a program of safety compliance to meet all of the requirements of FHWA and the DOT safety rules.

10.

The FHWA has failed and refused to provide us an opportunity to meet with anyone so to understand what, if any, continuing concerns they have about our operations. The only comments that we have received other than we were making great progress was the out-of-service orders served this morning along with the related papers.

11.

As an indication of our commitment to safety, in addition to the items I have previously provided, the following is applicable:

(1) The DOT requires a yearly inspection of each vehicle. We require inspection of our vehicles on a quarterly basis. Any vehicle not in compliance with this is taken off dispatch. Since August of 1993, the safety department of the company has been increased from one employee to a total of two full-time employees and one part-time employee at an approximate annual cost of \$67,500.00;

(2) There has been no indication to the company of any condition related to the company that would constitute "eminent danger to public safety". Further, if the orders are not vacated, it will have the practical effect of putting the company out of business. Our customers will have no alternative but to undertake to

develop new relationships to meet their transportation needs and the relationships developed over years of reliable service will be totally destroyed resulting in irreparable harm to the company.

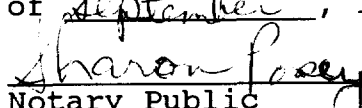
12.

The situation as it presently stands is extremely grave. Bo-Mark is contractually bound to service two vessels due to arrive in the Savannah port within the next forty-eight (48) hours: the Vessel Sagabreeze at 8:00 a.m., Friday morning; and the Vessel Thuleland at 8:00 a.m., Saturday morning. Collectively these vessels are bearing 6 million pounds of steel. If Bo-Mark fails to offload the steel and warehouse it at its own facility, it will have to be warehoused by the Port Authority at an extra cost of \$10,889.28.

FURTHER AFFIANT SAITH NOT.


JOHN R. PHILLIPS

Sworn to and subscribed
before me this 15th day
of September, 1994.


Notary Public

My Commission Expires:

Notary Public, Fulton County, Georgia
My Commission Expires June 23, 1997.

REVIEW TYPE: CR (US)		LEGAL NAME: BO-MARK TRANSPORT, INC.					
PLACE: PRINCIPAL OFFICE		OPERATING NAME (DBA):					
STATUS: UPDATE		LOCATOR 1: BOMARKTRANSPORTIN			LOCATOR 2:		
OPERATION: CARRIER		PHYSICAL ADDRESS: 4884 OLD LOUISVILLE RD. (County Code: 051) GARDEN CITY, GA 31410					
DOCUMENT #:	US DOT #: 0163813	MAILING ADDRESS: PO BOX 652 (County Code: 051) SAVANNAH, GA 31402					
REGION 04	OIC # 13	TERRITORY I	TELEPHONE #: (912)964-8620			Business Type: Corp (GA 1972)	
STATE ID #:		STATE #:		CLASS: Authorized			
CARRIER OPERATION		SHIPPER OPERATION		CONSORTIUM:			
Interstate		N/A		CITY:		STATE:	
Intrastate				ZIP+4:		TELEPHONE #: () -	
CARGO CLASSIFICATION: (C, F) Metal: Sheets, Rolls; Logs, Poles, Lumber							
HAZARDOUS MATERIALS CARRIED/SHIPPED None							
THIS REPORT WILL RESULT IN A NEW SAFETY RATING. PLEASE REVIEW IT CAREFULLY.							
QUESTIONS regarding this report or the Federal Motor Carrier Safety or Hazardous Materials rules may be addressed to the Office of Motor Carriers at: 1720 Peachtree Rd NW Suite 200, Atlanta, GA 30367 (404)347-4966							
NOTICE: Accident analysis and accident countermeasures assistance will be more of an integral part of each motor carrier review than it has been in the past. This will allow the FHWA to further assist each motor carrier in reducing their accident involvement. Accident countermeasures are strategies that may be implemented to improve carrier/driver performance in reducing accidents.							
GROSS: \$5,446,269		FY:01/01/93-12/31/93		DIV. RECORDS: NO		ICC #: MC-145027	
EQUIPMENT:		TRUCK		HM TANK		HM TANK	
	TRUCKS	TRACTORS	TRAILERS	TRAILERS	TRUCKS	BUSES	DRIVERS: Inter Intra
							< 100 miles 9 1
							≥ 100 miles 60 0
OWNED	0	37	126	0	0	0	TOTAL DRIVERS: 70
TERM LEASED	0	39	20	0	0	0	# OF CDL DRIVERS: 70
TRIP LEASED	0	0	0	0	0	0	Trip leases/month: 0
Total mileage: 4263394							
PERSON INTERVIEWED: JOHN R. PHILLIPS				MICHELE WILLIAMS			
TITLE: PRESIDENT				SAFETY DIRECTOR			
RECEIVED BY: <i>[Signature]</i>				TITLE: PRES.			
REPORTED BY: <i>[Signature]</i>				TITLE: <i>[Signature]</i>			
				CODE: US0566		DATE: 09/09/94	

COMPLIANCE REVIEW	BO-MARK TRANSPORT, INC. USDOT:0163813	DATE: 09/09/94 PAGE 1 OF 2
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SEQ	CFR EQUIVALENT:	SECTION NUMBER:	NUMBER FOUND	NUMBER CHECKED	DRVRS/VHCLS IN VIOL CHKD
1 F		386.82(a)	4	10	4 OF 10

Failing to undertake measures necessary to ensure that drivers are not used prior to obtaining pre-employment controlled substance test results in violation of a consent order.

Driver J. Bush was pre-employment controlled substance tested on 04-06-94 the results of this test were obtained on 04-07-94. Driver Bush was used to transport property from GA to NC on 04-06-94.

SEQ	CFR EQUIVALENT:	SECTION NUMBER:	NUMBER FOUND	NUMBER CHECKED	DRVRS/VHCLS IN VIOL CHKD
1 F		386.82(a)	10	35	10 OF 12

Failing to undertake measures necessary to ensure that drivers records of duty status are not falsified in violation of a consent order.

Driver J. Jarrell shows on his record of duty status for 03-18-94 as being off-duty all day in Savannah, GA, when in fact driver Jarrell transported 3 loads from the vessel Great Ocean from the docks to the Bo-Mark warehouse.

SEQ	CFR EQUIVALENT:	SECTION NUMBER:	NUMBER FOUND	NUMBER CHECKED	DRVRS/VHCLS IN VIOL CHKD
1 F		391.95 391.11(a)	1	4	1 OF 4

Using an unqualified driver, a driver who has tested positive for controlled substances, or refused to be tested as required.

Driver SSN 301481674 tested positive on a random screen conducted on 03-02-94. MEO signed positive on 03-11-94. Driver was retested on 03-14-94, and negative results on 03-18-94. Driver used in foreign commerce on 03-14-94.

SEQ	CFR EQUIVALENT:	SECTION NUMBER:	NUMBER FOUND	NUMBER CHECKED	DRVRS/VHCLS IN VIOL CHKD
1 F		391.103(a)	15	24	16 OF 24


Failing to require a driver-applicant whom the motor carrier intends to hire or use to be tested for the use of controlled substances as a pre-qualification condition.

Driver Lee Boyles was controlled substance tested as a pre-employment test on 08-15-94, results of this test were received on 08-16-94. Driver Boyles transported property from GA to SC on 08-15-94.

SEQ	CFR EQUIVALENT:	SECTION NUMBER:	NUMBER FOUND	NUMBER CHECKED	DRVRS/VHCLS IN VIOL CHKD
1 F		395.8(a)	55	180	26 OF 34

False reports of records of duty status.


On 05-10-94 driver L. Luke shows on his record of duty status as being off-duty all day in Savannah, GA, when in fact driver Luke transported 5 loads from the vessel Crown Rose to Bo-Marks warehouse in Garden City, GA.

RECEIVED BY : 	TITLE : PRES
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COMPLIANCE REVIEW	BO-MARK TRANSPORT, INC. USDOT:0163813	DATE: 09/09/94 PAGE 2 OF 2
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RECOMMENDATIONS:

1. Ensure all drivers subject to pre-employment, biennial, random, reasonable cause and/or post accident controlled substance testing are tested as required by Part 391, Subpart H of the FMCSR.
2. Do not allow drivers who have tested positive for use of a controlled substance to drive.
3. Establish a system to control drivers' hours of service. Do not dispatch drivers who don't have adequate hours available to complete assigned trips legally. Do not allow drivers to exceed the 10, 15 and 70 hour limits.
4. Ensure all drivers' records of duty status are accurate. Check records against supporting documents to verify accuracy. Prohibit falsification of duty status records by any of your drivers.
5. Conduct periodic internal reviews of your driver qualification, hours of service control, maintenance, accident analysis/reporting, training and other safety systems to ensure continued compliance with the FMCSR.

RECEIVED BY : 	TITLE : PRES
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INTRA-AGENCY MEMORANDUM	BO-MARK TRANSPORT, INC. USDOT:0163813	DATE: 09/09/94 PAGE 1 OF 3
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REASON FOR REVIEW: D. Enforcement Follow-up

G. Other: TOP 500 CARRIER

PLANNED COURSE OF ACTION: E. Prosecution: GA-94-111-566

PARTS REVIEWED CERTIFICATION:

(Sampling Method Used: C = CR; S = SR; N = Not Reviewed)

A.	B.	C.	D.	E.	F.	G.	H.	I.	J.	K.	L.	M.	N.	O.	P.	Q.	R.	S.
325	383	387	390	391	392	393	394	395	396	397	398	399	171	172	173	177	178	180
N	C	C	C	C	C	N	N	C	C	N	N	N	N	N	N	N	N	N

ACCIDENT INFORMATION (Prior 365 Days):

TOTAL ACCIDENTS: 8
PREVENTABLE ACCIDENTS: 7

PREVENTABLE/RECORDABLE ACCIDENTS
PER MILLION MILES: 1.64

TOTAL MILES OPERATED: 4,263,394

PRIOR REVIEWS	PROSECUTIONS	FOLLOWUP:	SPECIAL STUDIES: 1) 500
08/27/93	09/17/93	FEDERAL	
09/17/92	04/26/91		
01/30/92	03/12/85	PLACARDABLE QTY OF HM? NO	

The carrier received enforcement action in September 1993 and was placed under an NOI and Consent Order on 11-19-93. Previous enforcement was conducted in 1991 and 1985. The 1991 enforcement action involved the use of a driver that had tested positive for the use of controlled substances.

The carrier was found to have made no improvement toward upgrading its rating with violations of the consent order discovered and documented in the area of controlled substance testing(pre-employment), Using a physically unqualified driver(controlled substance Positive), and false records of duty status. The controlled substance testing violations (pre-employment) and false records of duty status extended during the entire 6 month review window.

This carrier has had 4 drivers test positive during the past 6 months of these 4 one was found to have been used in foreign commerce after the carrier had knowledge of the positive test.

The carrier has conducted 24 pre-employment controlled substance test during the past 6 months of these the carrier has used 16 of the drivers prior to receiving results of the test.

- Continued on Page 2 -

PRINCIPAL REVIEWER SIGNATURE <i>Sam Marlow</i>	CODE NO. 566	Upload Authorized: YES NO Authorized by: _____ Date: / /
ASSISTANT REVIEWER SIGNATURE <i>[Signature]</i>	CODE NO. /	Uploaded: YES NO Failure Code: _____ Verified by: _____

INTRA-AGENCY MEMORANDUM	BO-MARK TRANSPORT, INC. USDOT:0163813	DATE: 02/09/94 PAGE 2 OF 3
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One hundred and eighty records of duty status were checked for falsification during the six month period of these 55 were found to be false (30%) Drivers continuously fail to record local cartage from the port to the terminal.

The carriers accident frequency remains very high at 1.65 per million miles.

BEFORE THE
FEDERAL HIGHWAY ADMINISTRATION

IN THE MATTER OF:)

Bo-Mark Transport, Inc.)
4884 Old Louisville Road)
Garden City, Georgia 31410)

OUT OF SERVICE
ORDER NO. 94-116

AFFIDAVIT OF JOHN R. PHILLIPS

Personally appeared before the undersigned, an officer duly authorized to administer oaths, JOHN R. PHILLIPS, and after being duly sworn, upon oath, stated as follows:

1.

I am John R. Phillips and am President of Bo-Mark Transport, Inc. ("BTI"). The matters set forth herein are based on my own personal knowledge.

2.

I am familiar with the operations and procedures in place at BTI and make these representations regarding our operations. If the Out-of-Service Order is rescinded, each vehicle that is dispatched will proceed through our maintenance safety lane for examination by mechanics. We have one mechanic who does nothing but check trailers or brake adjustments, thread depth, lighting. Other mechanics check the tractors for all related mechanical and safety issues in accordance with the DOT regulations. The maintenance and safety department is led by Tommy Quick who is a DOT certified mechanic. Any vehicle that is found to be not in compliance with DOT rules and regulations will be parked until appropriate repairs are completed. A DOT checklist regarding these inspections is used at each inspection and maintained on file for

the unit (Exhibit "A"). Before the unit can be dispatched, the maintenance department must provide to the dispatcher in writing authorization indicating that the unit is available for dispatch.

3.

As to drivers, we have changed our procedures in this fashion. At such time as a drug test is ordered for a driver, he or she is out of service until such time as the results of the test are received. Once a drug test is ordered on a driver, he cannot be dispatched until safety has advised dispatch, in writing, that the drug results are in and are negative.

4.

All local hauls will be included in the driver's logs or our time records and will be taken into account in calculating available hours of service for each driver. No driver can be paid for local moves unless the log department okays payment. No payment would be authorized if it is not included in the logs (Exhibit "B").

5.

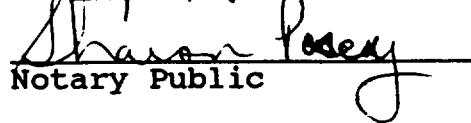
We maintain an hour of service log for each driver. This is maintained by Bonnie Mullenix-Rose. This log is prepared by reference to the trip documents when available and supplemented by the daily telephone report from the driver establishing his whereabouts and available hours of service. Any driver who does not have available hours of service is listed as out of service with the dispatchers by Ms. Mullenix-Rose (Exhibit "C").

6.

We have hired qualified personnel to oversee our compliance with FHWA rules and regulations and I have vested in our staff full authority and responsibility to assure compliance to the extent humanly possible.


JOHN R. PHILLIPS

Sworn to and subscribed
before me this 15th day
of September, 1994.


Notary Public

My Commission Expires:

Notary Public, Fulton County, Georgia
My Commission Expires June 23, 1997

SERVICE LANE CHECK LIST :

1. CHECK ALL LIGHTS.
2. ADJ. ALL BRAKES.
3. CHECK FOR CURRENT DOT INSP. (TRACTOR & TRAILER)
4. CHECK TIRES (ATR UP OR REPLACE AS NESS.)
5. CHECK OIL LEVEL & WATER. (TRACTORS)
6. CHECK FOR ANY LEAKS (NOTE IN SPACE PROVIDED.)
7. CHECK LOW AIR WARNING DEV.
8. CHECK BELTS HOSES ETC.
9. CHECK AIR LINES FOR CHAFFING.
10. CHECK OIL IN HUBS.
11. CHECK FOR FOREIGN OBJ. (UNSECURED DUNNAGE ETC.)
12. CHECK TARPS.
13. CHECK LOAD TRAPS.
14. CHECK LOAD (ENSURE ITS TIED DOWN CORRECTLY.)
15. HAVE POST TRIP INSP. (YCR.)

UNIT #. HUB READING.

MECH. SIG. DATE.

NOTES.

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THIS EQUIPMENT HAS PASSED INSPECTION PER SECTION 49 CFR SECTION
396 AND MAY NOW BE DISPATCHED.

INSPECTOR _____

UNIT# _____

DRIVER _____

TO: ALL DRIVERS
FROM: MICHELLE WILLIAMS - SAFETY DEPT.
RE: LOCAL WORK
DATE: SEPTEMBER 15, 1994

EFFECTIVE IMMEDIATELY ALL LOCAL WORK INCLUDING SHIPBOARD AND SUGAR
SHIP MUST BE **LOGGED**.

IF YOU HAVE ANY QUESTIONS, CONTACT THE SAFETY DEPARTMENT.

Bo-Mark

TRANSPORT, INC.

P.O. Box 652
Savannah, Georgia 31402

Watts 1-800-768-7825
Phone 912-964-8620
Fax 912-964-6312

September 21, 1994

Mr. Darrell C. Gregory
Regional Director
Office Of Motor Carriers
U.S. Department of Transportation
Federal Highway Administration
1720 Peachtree Road, NW
Atlanta, Ga. 30367

RE: REPLY TO NO. 9 - OPERATIONS OUT OF SERVICE ORDER NO. 94-116

Dear Mr. Gregory,

Please allow me to respond to the above referenced matter.

I have dedicated the following employees to the safety department to ensure and monitor compliance with the FMCSR, 40 C.F.R. PART 397:

J.W. Brown: Vice President: Liaison between the Safety Director, Michelle Williams and the Dispatch department. Mr. Brown reports directly to John R. Phillips. CEO.

Michelle Williams, Safety Director: Responsible for all compliance set forth by the FMCSR's. Has had nine (9) years in the Safety field at Coastal Transport, Bulldog Trucking and Bo-Mark Transport. Ms. Williams has been to three (3) seminars held by the DOT and Baldwin and Lyons. She oversees all Bo-Mark Transport employees to ensure compliance. Ms. Williams reports directly to John R. Phillips, CEO.

Stephen L. Cheshire, Comptroller: Help audit logs against supporting documentation. Mr. Cheshire worked two (2) yrs in directly in the Safety Department at Bo-Mark Transport. He also has worked dispatching, billing and rating. He currently has been the Comptroller for four (4) years.

Bonnie Mullenix-Rose, Safety Clerk: Ms. Rose will take all hours of service and audit logs. Ms. Rose has attended a Bo-Mark Transport drivers meeting and viewed the EAP training video along with the "Your Daily Log, A Driver's Guide To Hours Of Service, put out by J.J. Keller. Ms. Rose has been with Bo-Mark Transport for six (6) months. Prior to Bo-Mark Transport, Ms. Rose worked for Waste Management as office manager for five (5) years. Ms. Rose reports directly to Michelle Williams.

EXHIBIT "A"

page 2

Cedric Beamon, Safety Assistant: Mr. Beamon will work the three to midnight shift. He will audit trip envelopes against log to ensure everything is in compliance before the driver is allowed another trip envelope. Mr. Beamon was trained by Michelle Williams, and has seen the above mentioned tape. Mr. Beamon reports directly to Michelle Williams.

Robert Mckenna, Senior Dispatcher: Mr. Mckenna has been employed with Bo-Mark for seven (7) years. Mr. Mckenna is responsible for assuring that each dispatch is approved by the safety department. No dispatches are given until authorization is received.

Robert Jones, Dispatcher: Mr. Jones has been with Bo-Mark Transport for five (5) years. Mr. Jones is responsible for assuring that each dispatch is approved by the safety department. No dispatches are given until authorization is received.

Jeff Bell, Dispatcher: Mr. Bell has been with Bo-Mark Transport for two (2) months. Prior to Bo-Mark, Mr. Bell was employed by Eastern Flatbed, where he dispatched. Mr. Bell is responsible for assuring that each driver is approved by the safety department. No dispatches are given until authorization is received.

Every employee will receive additional training October 1, 1994 when a mandatory company meeting is held to assure complete compliance with the FMCSRs.

Sincerely,



John R. Phillips
Chief Executive Officer

enc.

Certificate

OF
BIANNUAL DRIVER TRAINING

PROVIDED TO AND RECEIVED BY:

9-16-94

5

DATE

NO. OF HOURS

Stephen L. Cheshire

CERTIFIED BY:

Nicholas Williams

SAFETY DIRECTOR



Certificate

OF

BIANNUAL DRIVER TRAINING

PROVIDED TO AND RECEIVED BY:

5-7-94

5

DATE

NO. OF HOURS

Bonnie Mullenix-Rose

CERTIFIED BY: *Mchelle Williams*

SAFETY DIRECTOR



Certificate

OF

BIANNUAL DRIVER TRAINING

PROVIDED TO AND RECEIVED BY:

3-28-94

5

DATE

NO. OF HOURS

Bonnie Mullenik-Rose

CERTIFIED BY: *Michelle Williams*

SAFETY DIRECTOR



Bo-Mark

TRANSPORT, INC.

P.O. Box 652
Savannah, Georgia 31402

Watts 1-800-768-7825
Phone 912-964-8620
Fax 912-964-6312

September 28, 1994

**Mr. Darrell C. Gregory
Regional Director
Office Of Motor Carriers
U.S. Department of Transportation
Federal Highway Administration
1720 Peachtree Road, NW
Atlanta, Ga. 30367**

RE: Reply to Out of Service Order No. 94-116, Section 16.

Dear Mr. Gregory,

In response to the above referenced matter:

I would like to explain what we have done to comply with all the Federal Motor Carrier Safety Regulations and provisions of the conditional rescission order issued.

I certify that the following things have been done to assure compliance with the above order:

Bo-Mark Transport informed all of its employees in writing of the terms of this order. It was also posted in two readily visible areas at our facility.

Bo-Mark Transport has immediately set up a new procedure for dispatching a driver to assure that he is within all the guide lines so not as to violate any hours of service rules. No driver is allowed a dispatch unless it is cleared by the Safety Department. Disciplinary actions are being taken for anyone who violates these guide lines. Please see attached.

Bo-Mark Transport has dedicated a Safety Associate to audit logs in the evening from 6:00 PM until 4:00 AM when the Safety Director is unavailable. The Safety Director along with the Comptroller are auditing every log with every piece of documentation available, including but not limited to fuel tickets, bills of lading, manifest, date and time of dispatch which is denoted on every trip envelope and our Driver's Hours of Service Fact Sheet.

page 2

Bo-Mark Transport has already obtained such reasonable assistance from J.J. Keller and Associates and has hired Mr. Bob Wilder, CDS with Motor Carrier Compliance Services, Inc. Mr. Wilder has reviewed Bo-Mark Transport's policies and procedures for compliance with Applicable Federal Motor Carrier Safety Regulations and has assured us we have a system in place and stated he will be back in ten (10) days and will check on Bo-Mark Transport's procedures and compliance enforcement from our staff.

On October 1, 1994, Bo-Mark Transport is having a mandatory company meeting to train and enforce all policies that Bo-Mark Transport has implemented to comply with 49 C.F.R. & 395.3. Please see attached policy.

Once again, please let me certify that Bo-Mark Transport is doing everything to comply with the above order. —

Sincerely,



Michelle Williams
Safety Director

enclosure

Bo-Mark

TRANSPORT, INC.

P.O. Box 652
Savannah, Georgia 31402

Watts 1-800-768-7825
Phone 912-964-8620
Fax 912-964-6312

SEPTEMBER 19, 1994

MEMO

RE: COMPANY POLICY/DISPATCHING DRIVERS

**TO: ROBERT MCKENNA
BOB JONES
JEFF BELL
MICHELLE WILLIAMS
BONNIE MULLENIX-ROSE
CEDRIC BEAMON**

FROM: J.W. BROWN

THE FOLLOWING GUIDELINES WILL APPLY IN DISPATCHING DRIVERS THROUGH THE SAVANNAH TERMINAL:

1. THE DRIVER'S ENVELOPE WILL BE GIVEN TO THE SAFETY DEPARTMENT AS SOON AS THE BILLING DEPARTMENT IS FINISHED AND A DRIVER HAS BEEN ASSIGNED TO THAT LOAD.

2. THE SAFETY DEPARTMENT WILL VERIFY THE HOURS OF SERVICE THAT THE DRIVER HAS IN ORDER TO MAKE THE DISPATCHED TRIP. IF HOURS OF SERVICE ARE IN ORDER, THE TRIP ENVELOPE IS GIVEN TO THE DISPATCHER OF SAFETY ASSOCIATE ON DUTY AT TIME OF DISPATCH.

3. THE DISPATCHER OR SAFETY ASSOCIATE ON DUTY WILL THEN GIVE THE DRIVER THE TRIP ENVELOPE ONLY AFTER THE FOLLOWING ITEMS HAVE BEEN CHECKED:

- 1. DRIVERS LOG BOOK WILL BE CHECKED TO SEE IF CURRENT THROUGH THE LAST DUTY STATUS CHANGE. ANY DRIVER NOT UP TO DATE WILL HAVE TO BRING HIS LOGS UP TO DATE BEFORE HE CAN BE GIVEN HIS DISPATCH ENVELOPE.**
- 2. LOG BOOK WILL BE CHECKED TO MAKE SURE DRIVER HAS LOGGED ON LINE FOUR (4) ANY FUELING, PRE-TRIP OR DISPATCH AT THE TIME THE LOAD IS GIVEN TO THE DRIVER.**
- 3. DISPATCHER/SAFETY ASSOCIATE WILL SIGN THE TRIP ENVELOPE AT THE TIME OF DISPATCH ALONG WITH THE DATE AND TIME.**
- 4. DRIVER WILL THEN PROCEED WITH THE DISPATCHED TRIP.**

NO DRIVER IS TO BE DISPATCHED UNLESS THE ABOVE GUIDE LINES HAVE BEEN MET. IF A DRIVER IS DISPATCHED AND THE GUIDE LINES HAVE NOT BEEN MET, YOUR JOB IS ENDED WITH THIS COMPANY.

AGAIN, LET ME SPELL THIS PROCEDURE OUT:

1. WHEN BILLING IS THROUGH WITH THE ENVELOPE, HAND DELIVER TO SAFETY DEPARTMENT.

2. SAFETY WILL THEN DENOTE IN WRITING TO THE DISPATCHER THE NUMBER OF HOURS THIS DRIVER HAS TO COMPLETE THIS DISPATCH. IF THE DRIVERS HOURS ARE NOT ENOUGH, THE DRIVER WILL THEN BE PUT OUT OF SERVICE UNTIL HE HAS ENOUGH HOURS TO COMPLETE THE TRIP. IF THE DRIVER IS IN TRANSIT AWAY FROM HIS HOME TERMINAL, YOU ARE TO INSTRUCT THE DRIVER AS TO WHERE HE IS TO TAKE HIS BREAK AND SAFETY WILL BE GIVEN DOCUMENTATION AS TO WHEN AND WHERE. THE SAFETY DEPARTMENT WILL THEN USE THIS INFORMATION TO POLICE HIS LOG AND MAKE SURE HIS LOG IS CORRECT AS TO THE DISPATCHERS INSTRUCTIONS.

3. AFTER REGULAR OFFICE HOURS, THE SAFETY ASSOCIATE THAT IS ON DUTY FROM 6:00 PM UNTIL 4:00 AM WILL ASSUME THE DUTIES OF THE DISPATCHER AS TO THE GIVING A DRIVER A TRIP ENVELOPE.

4. ALL BREAK-DOWNS ON THE ROAD WILL BE LOGGED AND GIVEN TO THE SAFETY DEPARTMENT AS A TOOL TO CHECK THE DRIVERS LOGS FOR ACCURACY.

IT WILL BE THE DISPATCHER/SAFETY ASSOCIATES RESPONSIBILITY TO MAKE SURE THAT THESE GUIDE LINES ARE FOLLOWED. ANY ONE THAT FEELS THAT HE CAN NOT FULFILL THIS REQUEST, I WILL EXPECT YOUR RESIGNATION AT ONCE.

ALSO, STARTING THIS SUNDAY, A DISPATCHER WILL BE ON DUTY AT THE SAVANNAH TERMINAL FROM 3:00 PM UNTIL 6:00 PM. THIS WILL VOID ANY SATURDAY WORK. AT THIS TIME SLOT, YOU WILL FOLLOW THE ABOVE GUIDE LINES ON EQUIPMENT AND LOADS LEAVING THE SAVANNAH TERMINAL UP TO 6:00 PM. THE SAFETY ASSOCIATE WILL COME ON DUTY EACH SUNDAY AT 6:00 PM.

IT IS EXPECTED OF EACH OF YOU TO MAKE SURE THIS COMPANY COMES INTO COMPLIANCE WITH THE FHWA AS TO THE DISPATCHING OF OUR DRIVERS AND THEIR HOURS OF SERVICE.

YOUR COMMITS AND QUESTIONS ARE WELCOME.

J.W. BROWN

CC: JOHN PHILLIPS

Bo-Mark
TRANSPORT, INC.

P.O. Box 652
Savannah, Georgia 31402

Watts 1-800-768-7825
Phone 912-964-8620
Fax 912-964-6312

TO: ALL DRIVERS

FROM: MICHELLE WILLIAMS, SAFETY DIRECTOR

RE: FUEL STOPS

IT IS ABSOLUTELY MANDATORY THAT EACH TIME YOU STOP FOR FUEL, YOU MUST CALL DISPATCH. (MOST LIKELY, THIS IS WHEN YOU CALL THEM ANYWAY, BUT YOU MUST CALL EVERY TIME.)

EVERY FUEL STOP MUST BE LOGGED AND AGREE WITH DISPATCH'S CALL IN LOG AS TO TIME, LOCATION, TRIP NO., ETC.

ALL YOU HAVE TO DO (IF YOU HAVE ALREADY REPORTED YOUR HOURS TODAY) IS CALL DISPATCH, TELL THEM YOU ARE FUELING, YOUR NAME, YOUR UNIT, CITY, STATE, AND TRIP NUMBER YOU'RE ON. IT WILL TAKE YOU NO LONGER THAN TWO MINUTES!

THANK YOU FOR YOUR CONTINUED COOPERATION!!!

PLEASE SIGN ONE COPY AND RETURN TO DISPATCH SHOWING YOU UNDERSTAND AND WILL COMPLY.

DRIVER'S SIGNATURE: _____

DATE AND TIME: _____

Bo-Mark

TRANSPORT, INC.

P.O. Box 652
Savannah, Georgia 31402

Watts 1-800-768-7825
Phone 912-964-8620
Fax 912-964-6312

TO: ALL DRIVERS / CONTRACTORS / OWNER-OPERATORS

FROM: MICHELLE WILLIAMS, SAFETY DIRECTOR

RE: NEW SAFETY PROCEDURES AND POLICIES

You are already aware of the company's policy regarding Logs and Tractor Maintenance. This is intended to explain specific duties you will have to fulfill.

1. LOGS MUST BE KEPT CURRENT TO THE LAST CHANGE OF DUTY STATUS. If they are not, we will be unable to dispatch you. When you call in to the terminal you will have to give the terminal a recap of your hours of service:

Total Hours Driving today,

Total Hours On Duty today, and

Total Hours On Duty for the Last 7 Days.

You will also be required to give them the City and State you are calling from, and YOU MUST LOG IT ACCURATELY AS THE TERMINAL'S RECORDS WILL BE CHECKED AGAINST YOUR LOG.

2. LOGS MUST BE TURNED IN AS SOON AS COMPLETED - AND AS SOON AFTER THAT MIDNIGHT AS POSSIBLE. Without it you will not be dispatched.

3. YOU MUST INDICATE THE DATE AND TIME YOU TURNED YOUR PAPERWORK IN ON YOUR PAPERWORK. THIS MUST ALSO AGREE WITH YOUR LOG SHOWING WHEN YOU ARE AT YOUR HOME TERMINAL.

4. TRIPS MUST BE RUN LEGALLY AND LOGGED THE WAY THEY ARE RUN. You have all seen the disciplinary policy and it will be enforced as written.

5. FOR EVERY TRIP, THERE MUST BE A POST TRIP INSPECTION ATTACHED TO IT. ALL SAFETY RELATED EQUIPMENT DEFICIENCIES NOTED BY YOU FOR THE TRACTOR ON THIS REPORT MUST BE CORRECTED BEFORE YOU CAN BE DISPATCHED.

6. TRACTORS MUST BE MAINTAINED TO DOT STANDARDS. QUARTERLY INSPECTIONS MUST BE PASSED BEFORE THE DEADLINE OR THE TRACTOR CAN NOT BE DISPATCHED UNTIL IT HAS PASSED - NO EXCEPTIONS.

7. ANY TRACTOR BEING PUT OUT OF SERVICE BY ANY ENFORCEMENT AGENCY IS NOT ELIGIBLE FOR DISPATCH UNTIL IT IS RE-INSPECTED BY OUR INSPECTION FACILITY.

ANY DRIVER THAT FAILS TO TURN IN SUCH INSPECTION WILL BE TERMINATED IMMEDIATELY.

ANY DRIVER THAT DRIVES A VEHICLE THAT HAS BEEN PUT OUT OF SERVICE BY ANY ENFORCEMENT AGENCY, BEFORE REPAIRS ARE MADE BRINGING THE UNIT BACK INTO SERVICEABLE CONDITION, WILL BE TERMINATED.

THESE INSPECTIONS WILL BE COMPARED TO YOUR POST TRIP INSPECTION REPORT AND DISCREPANCIES NOTED.

WHEN A UNIT IS PUT OUT OF SERVICE FOR BAD TIRES, RECEIPTS FOR REPLACEMENT TIRES MUST ACCOMPANY THE OUT OF SERVICE INSPECTION AND MUST BE INSPECTED BY OUR FACILITY.

ANY TRACTOR PUT OUT OF SERVICE FOR "INOPERATIVE BRAKES" WILL BE TERMINATED UNLESS AN UNANTICIPATED EQUIPMENT FAILURE CAN BE VERIFIED BY OUR INSPECTION FACILITY. DRIVERS ARE EXPECTED TO KEEP ALL BRAKES ADJUSTED TO LEGAL TOLERANCES AT ALL TIMES.

ANY TRACTOR PUT OUT OF SERVICE TWICE FOR THE SAME VIOLATION WILL BE TERMINATED IMMEDIATELY.

8. ANY TRACTOR INVOLVED IN A REPORTABLE / PREVENTABLE ACCIDENT WILL BE INELIGIBLE FOR DISPATCH UNTIL IT HAS BEEN INSPECTED BY OUR INSPECTION FACILITY AT THE DRIVER'S EXPENSE. REFUSAL TO BE INSPECTED WILL BE CAUSE FOR IMMEDIATE TERMINATION.

9. MAINTENANCE REPORTS ARE DUE THE 10TH OF EVERY MONTH SHOWING ALL MAINTENANCE PERFORMED THE PREVIOUS MONTH. ALL UNITS THAT REPORTS HAVE NOT BEEN RECEIVED FOR WILL BE TAKEN OFF DISPATCH UNTIL IT IS RECEIVED.

10. A strict disciplinary policy for drivers ranging from warning to dismissal will be issued shortly for vehicle maintenance problems. This policy, when issued, will be enforced without exception.

DRIVER CERTIFICATION

I HAVE READ AND UNDERSTAND THE PRECEDING POLICIES AND PROCEDURES.

Driver's Signature: _____ Unit No.: _____

Social Security No.: _____ Date/Time: _____

Original - Safety, File in Qualification File
Copy to Driver

Bo-Mark

TRANSPORT, INC.

P.O. Box 652
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Watts 1-800-768-7825
Phone 912-964-8620
Fax 912-964-6312

YOUR DAILY LOG HANDBOOK

KEEP IT LEGAL. KEEP IT CURRENT

If there's one piece of "paperwork" that is synonymous with the trucking industry, it's the driver's "log." As a driver you are very familiar with this everyday time recording requirement.

Why is the record of duty status (more commonly known as the daily log) so important? Who regulates hours of service of truck drivers? What are the federal requirements? What happens if you don't follow the rules? We'll take a look at these and other questions about hours of service and logging in this booklet.

WHY IS THE DRIVER'S LOG IMPORTANT?

The underlying reason for the hours of service regulations which include the logging requirement is safer trucking operations. In simple terms, a tired driver is not a safe driver! Mandating limits on time you can spend behind the wheel before you are required to have a period of time off makes sense.

Out of this simple concept grows the need for a way to keep track of time spent by a driver in various activities. Enter the log, officially called the record of duty status.

Since the beginning of 1983, there has been no specific required form on which a driver's time must be recorded. There is only the requirement that certain items of information be recorded in some fashion. We'll talk more about that later.

WHO REGULATES HOURS OF SERVICE?

On the federal level, hours of service of drivers are part of the Federal Motor Carrier Safety Regulations (FMCSR), issued and enforced by the Office of Motor Carrier Standards in the Federal Highway Administration of the DOT.

Specifically, Part 395 of the FMCSR covers Hours of Service of Drivers and gives the requirements and exceptions that apply to the area. You should become familiar with its provisions. In addition, many of the individual states have hours of service requirements that apply to operations within their jurisdictions. These requirements may match the federal requirements in whole or in part. However, some states have different or no requirements concerning hours of service.

TO WHOM DO THE LIMITS APPLY?

Hours of service regulations apply to all carriers (and their drivers) involved in the transportation of property or passengers in interstate or foreign commerce, to quote the language of the safety

About the only exception listed in the regulations is vehicles which have a manufacturer's gross vehicle weight rating of 10,000 pounds or less, unless they are hauling hazardous materials which require placarding. Check the regulations in Part 395 of the FMCSR for specifics.

WHAT ARE THE FEDERAL REQUIREMENTS?

The FMCSR regulations on hours of service concentrate on three basic limits:

- A) 10 HOURS DRIVING TIME
- B) 15 HOURS ON-DUTY TIME
- C) 60 OR 70 HOURS OF SERVICE MAXIMUM (DEPENDING ON THE TYPE OF OPERATION YOU WORK FOR.)

10 HOURS DRIVING TIME

The basic rule in this area is very clear. Behind the wheel time is driving time. After 10 hours of it, you must have eight hours of rest. In order to have 10 full hours of driving time available to you again, the eight hours off duty must be in a consecutive block of time.

SLEEPER BERTH OPTION

- Please see your dispatcher for instructions should you need to use the sleeper berth option.

BAD WEATHER EXCEPTION

If you encounter severe weather or bad roads or traffic conditions that cause you to be delayed and that could not be foreseen when you set out, the 10-hour driving time limit can be extended for an additional two hours. This should be regarded as a very exceptional case, but it is a way to avoid the problem of hours of service violations in certain specific situations.

The exception does not apply if you were aware of the potential for hazardous driving conditions before you set out. You get up to two extra hours of driving time if, and only if, you could have made the run in the 10-hour limit under normal conditions.

15 HOURS ON-DUTY TIME

You can no longer drive after you have been on duty for 15 hours until you have eight consecutive hours of off-duty time. The same safety principle is behind this rule as the driving time rule - a tired driver is not a safe driver. After 15 hours on the job, you are quite likely to be tired and less alert unless you're Superman!

This rule does not preclude drivers working in other capacities for longer than 15 hours - you just can't drive after 15 hours on the job. The rule is often misunderstood to mean that a driver can only be on duty for 15 hours, period.

What is on-duty time exactly? Besides your actual time behind the wheel, you are on-duty whenever you are either working or required to be in readiness to work.

All on-vehicle time (except when you are in the sleeper berth) is considered on-duty time even when you are not driving.

In addition, time spent doing your required inspections or troubleshooting vehicle problems, loading or unloading or making deliveries, attending a disabled vehicle, carrying out your duties at an accident scene, etc. are on-duty time. Even work that has nothing to do with transportation is included in on-duty time if it is required by your company. And work on other jobs you might hold part-time must also be counted.

60 OR 70 HOURS OF SERVICE MAXIMUM

The third rule on hours of service varies according to the "week" used for recording time by the trucking operation you work for. Generally speaking, companies either operate with a 6-day week or a 7-day week.

We work with a 7-day week. you can accumulate 70 hours on-duty time in any eight consecutive days.

HOW IS YOUR TIME RECORDED?

Now, down to the mechanics of recording your time. As indicated earlier, there has been no prescribed log form since January 1, 1983. You are only required to maintain a record of duty status that accounts for all your time and includes certain specific items and a grid for recording time.

TIME RECORDING OPTIONS

You will find our company uses "A DRIVER'S DAILY LOG, STANDARD FORM OR MODIFIED" for time recording.

11 REQUIRED ITEMS

Whichever form your company prescribes must include the following items of information:

1. THE GRAPH GRID WITH A "REMARKS" SECTION (USUALLY LOCATED BELOW OR NEXT TO THE HORIZONTAL OR VERTICAL GRID)
2. THE DATE
3. TOTAL MILES DRIVING TODAY
4. TRUCK OR TRACTOR AND TRAILER NUMBERS
5. NAME OF THE CARRIER
6. CARRIER'S MAIN OFFICE ADDRESS
7. A PLACE FOR DRIVER SIGNATURE/CERTIFICATION
8. THE STARTING TIME OF THE 24-HOUR PERIOD COVERED BY THE "LOG" - THIS STARTING POINT CAN BE SET ANYWHERE AT THE DISCRETION OF YOUR COMPANY BUT THE SAME STARTING POINT MUST BE USED FOR AN ENTIRE TERMINAL. OUR COMPANY USES 12:00 MIDNIGHT FOR ALL TERMINALS AS YOUR STARTING TIME.
9. NAME OF CO-DRIVER
10. TOTAL HOURS (AT END OF GRID)
11. SHIPPING DOCUMENT NUMBER OR NAME OF SHIPPER AND COMMODITY

A record of duty status must be filled out in duplicate (most forms provide for this automatically) for each 24-hour period - period covered can start at any point designated by the company. Entries relating to your duty status must be legible and in your own handwriting. Some of the other information required on the record may be preprinted (carrier name and main office address, for example.)

100-MILE EXEMPTION

If you are a driver who operates within a 100 air-mile radius of your normal work reporting location (and you are not a driver salesperson), you may be exempt from keeping duty status records as long as your company keeps very careful records (remember that you are still subject to the other hours of service regulations.) The regulations specify a number of conditions that must be met for the exemption to be valid. Our company requires all local drivers to fill out a exemption. Check with your dispatcher to see what log book you need to fill.

Another piece of the 100 air-mile exemption is that you must be released after a 12-hour work day. If you are required to be on-duty longer than 12 hours, you will be required to log even if you operate within the 100 air-mile radius.

If you are a driver of a lightweight vehicle (gross vehicle weight rating of 10,000 pounds or less), you are also exempt from keeping a record of duty status unless you are hauling passengers or hazardous materials in a quantity that requires placarding.

HOW LONG DO YOU KEEP THEM?

You are required to keep the duplicate copies of the records of duty status for the previous seven days in your possession. The copies must be available whenever you are on duty. So at any time you must have your current record and the seven previous ones.

The original (which may be handed in or mailed to the terminal or main office, depending on company policy) must be kept for six months. You are required to submit records of duty status within 13 days of the period for which they apply. Our company policy requires that you must turn in logs on a daily basis.

HOW CURRENT IS CURRENT?

The safety regulations require that a record of duty status be "current to the time shown for the last change of duty status." that means keeping your log or other format up-to-date at all times.

Actually, it is to your advantage to keep close track of your time so you know precisely how much driving and/or on-duty time you have remaining before off-duty time is required. Remember that section on the "sleeper berth option" earlier in this handbook.

But you do have to account for that time in some way for your recordkeeping to be absolutely correct. Follow company policy.

The method most often used is to fill out a single log or other record that shows off-duty time for the entire period of time indicated on the single form. This is sufficient record of your off-duty time.

WHAT IF YOU WORK FOR SEVERAL CARRIERS?

If you drive for more than one company, you are still bound by the hours of service regulations. You must follow the driving and on-duty time rules.

Make a copy of your record of duty status for each carrier that employs you. Show exact times worked for each company. Tell a new supervisor how many hours you have been on duty during the past seven days and what time you went off duty at your last job.

WHAT ARE YOUR RESPONSIBILITIES?

If you are an interstate driver transporting passengers or property, you must comply with the hours of service regulations. Your company is required to provide the format on which to record your time, but you must fill out the specified format and keep it accurate and up-to-date.

WHAT HAPPENS IF YOU DON'T FOLLOW THE RULES?

The federal regulations place responsibility for accurate time recording on both the carrier and the individual driver. Federal Motor Carrier enforcement personnel can issue citations for hours of service violations and fines can be levied on both carriers and drivers. A driver can also be placed "out of service" for logging violations.

YOU CAN BE CITED just the same as if you are willfully violating the rules. It's in your best interest to know the requirements and follow them. Ignorance of the regulations is no excuse for non-compliance.

SO KNOW THE HOURS OF SERVICE REGULATIONS, THEN MAKE IT A PRACTICE TO FILL OUT YOUR DAILY LOG CAREFULLY, NEATLY AND CORRECTLY - KEEP IT LEGAL AND KEEP IT CURRENT.

DRIVER'S SIGNATURE

DATE

TRAINER'S SIGNATURE

DATE

Bo-Mark

TRANSPORT, INC.

P.O. Box 652
Savannah, Georgia 31402

Watts 1-800-768-7825
Phone 912-964-8620
Fax 912-964-6312

DISCIPLINARY POLICY FOR HOURS OF SERVICE VIOLATIONS

10 HOUR VIOLATIONS

- 1ST OFFENSE - VERBAL
- 2ND OFFENSE - WRITTEN
- 3RD OFFENSE - SUSPENSION
- 4TH OFFENSE - TERMINATION

15 HOUR VIOLATIONS

- 1ST OFFENSE - VERBAL
- 2ND OFFENSE - WRITTEN
- 3RD OFFENSE - SUSPENSION
- 4TH OFFENSE - TERMINATION

70 HOUR ON DUTY VIOLATIONS

- 1ST OFFENSE - VERBAL
- 2ND OFFENSE - WRITTEN
- 3RD OFFENSE - SUSPENSION
- 4TH OFFENSE - TERMINATION

FAILING TO MAINTAIN RECORD OF DUTY STATUS VIOLATIONS

- 1ST OFFENSE - VERBAL
- 2ND OFFENSE - WRITTEN
- 3RD OFFENSE - SUSPENSION
- 4TH OFFENSE - TERMINATION

FALSIFICATION OF RECORD OF DUTY STATUS VIOLATIONS

- 1ST OFFENSE - VERBAL
- 2ND OFFENSE - WRITTEN
- 3RD OFFENSE - SUSPENSION
- 4TH OFFENSE - TERMINATION

OTHER RECORD OF DUTY STATUS VIOLATIONS

- 1ST OFFENSE - VERBAL
- 2ND OFFENSE - WRITTEN
- 3RD OFFENSE - SUSPENSION
- 4TH OFFENSE - TERMINATION

I HAVE RECEIVED THE COMPANY RULES FOR LOG VIOLATIONS AND WILL ABIDE BY THEM.

DRIVER: _____

SSN: _____

DATE: _____

TERMINAL: _____

COMPANY SIGN: _____

DATE: _____

DISPATCHERS

JEFF BELL
121 PADDLEFORD RD
RINCON, GA 31326

7/14/94
DOH

7/23/53
DOB

HISTORY

1. EASTERN FLATBED SYSTEM 1993 TO 1994
DISPATCHER
2. G & P TRUCKING 1990 TO 1993
DISPATCHER
3. BOWMAN TRANSPORTATION 1976 TO 1990
DISPATCHER/SALES/OPER. MGR.
4. FIVE TRANSPORTATION 1974 TO 1976
DISPATCHER

ROBERT JONES
RT 1 BOX 180
RICHMOND HILL, GA 31324

2/01/89
DOH

4/24/30
DOB

HISTORY

1. GAY TRUCKING 9/1/1986 TO 1/30/1989
DISPATCHER
2. SIL 1985 TO 1986
TERMINAL MANAGER
3. TAYLOR MAID TRANSPORT 1983 TO 1985
DISPATCHER

ROBERT MCKENNA
2132 WALZ DR
SAVANNAH, GA 31404

7/06/87
DOH

11/01/49
DOB

HISTORY

1. HERITAGE TRANSPORT 1985 TO 1987
OPERATIONS MANAGER
 2. SELF EMPLOYED 1981 TO 1985
CONSTRUCTION
 3. BURGER KING CORP 1977 TO 1981
MANAGER
-

DEBORAH ROBINSON
5608 SILKHOPE RD #6
SAVANNAH, GA 31405

3/21/94
DOH

10/24/51
DOB

HISTORY

1. SELF EMPLOYED 1993 TO 1994
BROKERING AGENT
2. COOK TRANSPORT 1983 TO 1993
DISPATCHER

SAFETY DEPARTMENT

**MICHELLE WILLIAMS
422 SCREVEN AVE
SAVANNAH, GA 31404**

**1/28/91
DOH**

**8/08/67
DOB**

HISTORY

- 1. J & M
12/ 1990 TO 1/ 1991
SOLICIT FREIGHT**
 - 2. BULLDOG TRUCKING
2/ 1990 TO 12/ 1990
OPERATIONS MANAGER**
 - 3. ATS
08/ 1989 TO 2/ 1990
CLERICAL**
 - 4. COSTAL TRANSPORT
2/ 1985 TO 7/ 1988
SAFETY/PERSONNEL**
-

**BONNIE W MULLENIX-ROSE
RT 5 BOX 630F
SAVANNAH, GA 31408**

**3/27/94
DOH**

**5/14/44
DOB**

HISTORY

- 1. WASTE MANAGEMENT
9/ 1988 TO 6/ 1993
OFFICE MANAGER**
- 2. MASSEY & SUTTON
4/ 1988 TO 9/ 1988
OFFICE MANAGER**
- 3. GEORGIA PACIFIC
10/ 1987 TO 3/ 1988
SWITCHBOARD/RECEPTIONIST**
- 4. CORIM INC
3/ 1985 TO 7/ 1986
PROPERTY MANAGEMENT**
- 5. PAPER CHEMICAL
8/ 1983 TO 8/ 1984
ACCOUNTS PAYABLE**

MECHANICS

CEDRIC BEAMAN
4309 AUGUSTA AVE #70-B
GARDEN CITY, GA 31408

4/03/94
DOH

7/17/66
DOB

HISTORY

- 1. KYRSTAL KLEEN** **1993 TO 1994**
ROUTE MANAGER
 - 2. USMC** **1989 TO 1993**
 - 3. BERNITA** **1988 TO 1989**
WAREHOUSE MANAGER
 - 4. RAINBOW INTL CARPET** **1986 TO 1988**
DYE & CLEANING **ROUTE MANAGER**
-

STEVE CARR
P.O. BOX 361
PORTAL, GA 30450

8/04/94
DOH

11/08/73
DOB

HISTORY

- 1. ATTENDING VO TECH** **1994**
DIESEL MECHANIC
- 2. SELF EMPLOYED** **1992 TO 1994**
FARMER

CLIFFORD DEWEY EAGERTON
6 N CHESTNUT ST
BLOOMINGDALE, GA 31302

09/26/94
DOH

03/03/45
DOB

HISTORY

1. GA DRUM CORP 1/1993 TO 6/1993
MECHANIC
2. BO-MARK TRANSPORT 5/1990 TO 12/1992
MECHANIC
3. J & M TRANSPORT 2/1989 TO 5/1990
MECHANIC
4. GAY TRUCKING 6/1993 TO 2/1989
MECHANIC

QUALIFICATIONS

J & M
CUMMINS

8 CAM BRAKES BRAKE ADJUSTMENTS AUTO SLACK
CUMMINS ENGINE TRAINING COURSE

ROBERT HODGES
215 N. SKINNER AVE
POOLER, GA 31322

1/17/94
DOH

3/15/59
DOB

HISTORY

1. MIKE CROSBY 6/ 1993 TO 1/ 1994
CARPENTER
2. CERTIN 1/ 1993 TO 6/ 1993
SHEET METAL MECHANIC
3. EDDIE HODGES 1991 TO 1992
LAWNMOWER MECHANIC
4. SOUTHERN PAPER 1989 TO 1991
MAINTENANCE
5. NORTH BROTHERS 1985 TO 1989
SHEET METAL MECHANIC
6. INTERSTATE TRUCK LEASE 1981 TO 1983
TRAILER REPAIRS

GILBERT MILLER
6 FRIAR TUCK DR
SAVANNAH, GA 31406

7/21/72
DOH

12/25/47
DOB

HISTORY

1. BO-MARK TRANSPORT

7/21/1972

QUALIFICATIONS

ROCKWELL INTL:

Q-BRAKE AND AUTO SLACK

MACS:

CFC 12 REFRIGERANT RECYCLING

ICS:

MASTER MECHANIC & AIR CONDITIONING CLASSES
CERTIFIED TO ADJUST BRAKES

JOSHUA MOORE
1607 ROSEWOOD DR
SAVANNAH, GA 31406

12/02/93
DOH

5/18/59
DOB

HISTORY

1. BAKER TRUCKING

1/ 1988 TO 1/ 1993
MECHANIC

2. DAN EILLISON TRUCKING

1/ 1986 TO 1/ 1988
MECHANIC

CLIFFORD OLIVER
132 INTERSTATE CIRCLE
BLOOMINGDALE, GA 31302

7/19/94
DOH

12/13/63
DOB

HISTORY

1. BULLOCH COUNTY MAINT. 1/ 1994 TO 7/ 1994
TIREMAN/MECHANIC
2. MASSEY LOGGING 4/1993 TO 1/ 1994
SAWMAN
3. D & H TIRE SERVICE 7/1986 TO 5/1992
TIREMAN

WHITFIELD PAYNE
732 E 39TH ST
SAVANNAH, GA 31401

9/01/92
DOH

6/03/34
DOB

HISTORY

1. ALL POINTS TRANS/
SAVANNAH INTERMODAL 2/1992 TO 8/ 1992
MECHANIC/DRIVER
2. SELF EMPLOYED 9/ 1991 TO 2/ 1992
MECHANIC
3. MOVSOVITZ OF GA 1/1990 TO 9/1991
MECHANIC
4. COASTAL TRANSPORT 4/ 1986 TO 2/ 1990
MECHANIC
5. GAY TRUCKING CO. 2/ 1985 TO 4/ 1986
MECHANIC/TRAILER MAINTIANCE
6. ATLANTIC WOOD IND. 11/ 1979 TO 5/ 1984
MECHANIC

QUALIFICATIONS

ROCKWELL INTL
HOLLAND
LEECE-NEVILLE
MACS
CUMMINS

SAVH TECH 80 HRS
SAVH TECH 80 HRS
SAVH TECH 80 HRS
SAVANNAH TECH

Q-BRAKE & AUTO-SLACK
FIFTH-WHEEL REBUILDING
CHARGING & STARTING SYSTEMS
CFC 12 REFRIGERANT RECYCLING
TUNE UP & TROUBLESHOOTING
CATERPILLAR DIESEL/AIR CONDITIONING
ELECTRONIC IGNITION & COMPUTERIZED
CUMMINS ENGINES
DIPLOMA DIESEL/TRUCK REPAIR TECH

JOHN R PHILLIPS, JR.
407 EDGEFIELD RD
SAVANNAH, GA 31406

4/20/89
DOH

2/04/67
DOB

HISTORY

1. BO-MARK TRANSPORT 4/20/1989 TO PRESENT
SHOP CLERK/PARTS CLERK
2. SELF EMPLOYED 6/1988 TO 4/1989
3. BO-MARK TRANSPORT 6/11/1984 TO 6/1988
MECHANIC'S HELPER

HARRY T. QUICK
102 N RAILROAD AVE
SPRINGFIELD, GA 31329

9/12/94
DOH

1/14/47
DOB

HISTORY

1. TERMINAL INVESTMENTS 7/ 1993 TO 9/ 1994
D/B/A TICO MFG GENERAL FOREMAN OF MFG
SUPERVISOR OF HEAVY REPAIR DIV
2. TERMINAL INVESTMENTS 12/ 1991 TO 7/ 1991
D/B/A TERMINAL SERVICES PORT MANAGER
3. TERMINAL INVESTMENTS 12/ 1989 TO 12/ 1991
MAINTENANCE MANAGER
4. BROWN TRANSPORT 3/1978 TO 12/1989
SHOP FOREMAN -MAINTENANCE
5. BROWN TRANSPORT 5/ 1972 TO 3/ 1978
LOCAL DRIVER/DOCK SUPERVISOR
6. AMERICAN CYANAMID 3/1966 TO 5/ 1972
LABORATORY ANALYST

CLIFFORD WASHINGTON
1401 E 53RD ST
SAVANNAH, GA 31404

6/21/94
DOH

3/03/40
DOB

HISTORY

- | | |
|------------------------|-----------------|
| 1. BATSON & COCK | 1994
LABORER |
| 2. CS&G INC | 1994
LABORER |
| 3. HARBOR CONSTRUCTION | 1994
LABORER |



Rockwell International

Automotive Operations

This Certificate is granted to

GILBERT MILLER

*for completion of
The Rockwell Training Program on*

Q-BRAKE & AUTO-SLACK

8/18/93

Date

C. E. Miller

Instructor



MOBILE AIR CONDITIONING SOCIETY

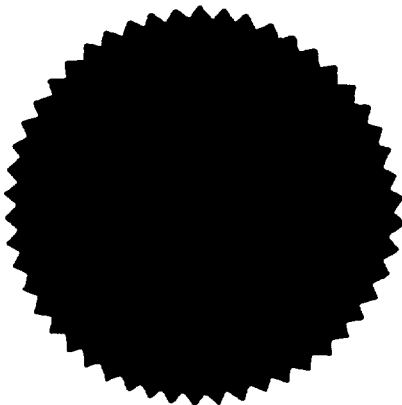
5/26/93

308669

Gilbert Miller, III

Bo-Mark Transport Inc.

**has successfully completed training in CFC - 12
refrigerant recycling and service procedures
offered by the Mobile Air Conditioning Society.**




Simon Oulouhojjan, Executive Director

BO-MARK TRANSPORT, INC.

POST OFFICE BOX 652
SAVANNAH, GEORGIA 31402
TERM.: OLD LOUISVILLE ROAD

(912) 964-8620
FAX (912) 964-6312

I HEREBY CERTIFY THAT THE FOLLOWING LISTED MECHANIC/DRIVER IS
AUTHORIZED/CERTIFIED AND TRAINED TO PROPERLY ADJUST BRAKES AS
SPECIFIED AND SET FORTH BY THE FEDERAL MOTOR CARRIER SAFETY
REGULATIONS.

HE HAS HAD _____ MONTHS, _____ YEARS OF TRAINING AND
_____ MONTHS, 18 YEARS OF ON-THE-JOB TRAINING.

Nathanial Edwards
CERTIFIER

2-4-92
DATE
Gilbert Miller
GILBERT MILLER
MECHANIC/DRIVER

041 - 2269900 02 - 4380
Mr. Gilbert Miller 9/26
530 E. 35th St.
Savannah, GA 31401



STUDENT

Mr. Robert Phillips, Mgr.
Pilot Freight Carrier
Cleveland Ave.
Savannah, GA 31401

PROGRESS
REPORT TO

PROGRAM OUTLINE

for

from

ICS
SINCE 1890

The above named student has been accepted for enrollment in the program checked below.

AUTOMOTIVE MASTER MECHANIC

- ☒ Part I Automotive Mechanic *options to be selected*
☒ Part II Automotive Air Conditioning
☐ Part II Automobile Body Rebuilding and Refinishing
☐ Part II Diesel-Gas Mechanic

TITLE	DATE	GRADE
Part I—Automotive Mechanic		
Automotive Hand Tools		
Automobile Cooling Systems		
Automobile Brakes		
Automobile Fuel and Emission Control Systems		
Automobile Lubrication		
Automobile Electrical		
Automobile Tune-Up		
Automobile Carburetors		
Engine Service		
Automobile Suspension and Steering Systems		
Automobile Drive Accessories		
Automobile Transmissions		
Part II—Automotive Air Conditioning		
Automobile Air Conditioning		
Part II—Automobile Body Rebuilding and Refinishing		
Automobile Collision Work		
Automobile Body Refinishing		
Part II—Diesel-Gas Mechanic		
Formulas		
Logarithms		
Practical Geometry and Trigonometry		
Engineering Mechanics I		
Heat Part I		
Lubrication		
Elementary Chemistry		

GRADING SYSTEM: A = 100-93 B = 92-85 C = 84-78
D = 77-70 E = Excused H = Make-up
I = Below 70
G = Final Exam Passed
R = Remove (Delete)

BO-MARK TRANSPORT. INC.

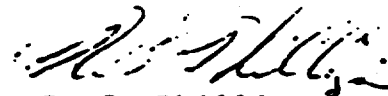
POST OFFICE BOX 682
SAVANNAH, GEORGIA 31402
TERM.: OLD LOUISVILLE ROAD
—
(912) 964-6620

December 23, 1985

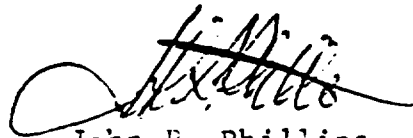
We are pleased to announce effective, January 1, 1986, Gilbert Miller is being promoted to Driver Supervisor and Maintenance Administrator with all the authority of the undersigned to hire or relieve drivers and maintenance personnel of duties.

His duties are basically:

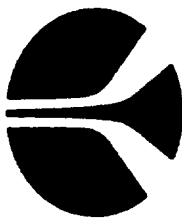
1. Supervisor, test and discipline drivers.
2. Safety-working closely with Jim Brannen, Safety Director.
3. Supervision of all maintenance & tire personnel working closely with Treely Yancy, Shop Foreman.
4. Inspection of equipment to see that they are equipped with necessary cab card, license and safety equipment.
5. Drivers will report problems directly to Gilbert Miller.



R. S. Phillips
President



John R. Phillips
Vice President



Rockwell International

Automotive Operations

This Certificate is granted to

WHITFIELD PAYNE

*for completion of
The Rockwell Training Program on*

Q-BRAKE & AUTO-SLACK

8/18/93

Date

C.E. [Signature]

Instructor

CERTIFICATE OF COMPLETION

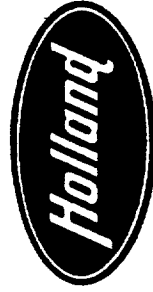
This is to certify that

WHITEFIELD PAYNE

has successfully completed the Holland Training
Seminar for FIFTH WHEEL REBUILDING

Date of Completion JAN. 19TH, 1993

Dwight K. Jones
COMPANY REPRESENTATIVE



Robert K. Scher
HOLLAND REPRESENTATIVE

SE# HWH #23



MOBILE AIR CONDITIONING SOCIETY

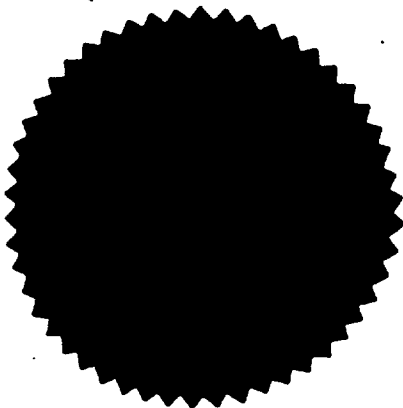
5/21/93


308642

Whitfield Payne

Bo-Mark Transport

**has successfully completed training in CFC - 12
refrigerant recycling and service procedures
offered by the Mobile Air Conditioning Society.**




Simon Oulouhojian, Executive Director

Certificate of Achievement
Cummins South, Inc.

awarded to

WHITFIELD H. PAYNE, SR.

for successfully completing the
Cummins Engine Company, Inc.
training course entitled

TUNEUP & TROUBLESHOOTING

Date 5/19/89

Ronald L. Ince training manager





THE BOARD OF PUBLIC EDUCATION FOR SAVANNAH AND CHATHAM COUNTY

CERTIFICATE OF COMPLETION

THIS CERTIFIES

THAT WHITFIELD H. PAYNE SR. HAS SATISFACTORILY COMPLETED
80 HOURS IN CATERPILLAR DIESEL/AUTO AIR CONDITIONING

CONTINUING EDUCATION DIVISION

IN TESTIMONY OF THIS FACT, THE SIGNATURE OF THE EXECUTIVE
DIRECTOR AND THE COORDINATOR OF SAVANNAH TECH ARE HERETO ATTACHED.

THIS EIGHTH DAY OF JUNE, ONE THOUSAND
NINE HUNDRED AND EIGHTY-SEVEN
Edith F. Brown William J. Van
COORDINATOR EXECUTIVE DIRECTOR OF SAVANNAH TECH

TECHNICAL SERVICE TRAINING CHARGING AND STARTING SYSTEMS

Certificate of Achievement

This certifies that WHITFIELD PAYNE SR. has attended
the Heavy-Duty Electrical Clinic on APRIL 26th 1993 at GARDEN CITY (SAVANNAH)
GEORGIA State City Date
Training included proper use of Required Test Equipment
and the Diagnostic Procedures to troubleshoot these systems.

LEECE-NEVILLE®

A PRESTOLITE ELECTRIC BUSINESS

Ken Gaudin Tech. Rep.
Instructor Position



THE BOARD OF PUBLIC EDUCATION FOR SAVANNAH AND CHATHAM COUNTY

CERTIFICATE OF COMPLETION

THIS CERTIFIES

THAT WHITFIELD H. PAYNE, SR. HAS SATISFACTORILY COMPLETED
80 HOURS IN ELECTRONIC IGNITION & COMPUTERIZED SYSTEMS

CONTINUING EDUCATION DIVISION

IN TESTIMONY OF THIS FACT, THE SIGNATURE OF THE EXECUTIVE
DIRECTOR AND THE COORDINATOR OF SAVANNAH TECH ARE HERETO ATTACHED.

THIS SIXTEENTH DAY OF SEPTEMBER, ONE THOUSAND
NINE HUNDRED AND EGHTY-SEVEN
Elizabeth A. Brown William
COORDINATOR EXECUTIVE DIRECTOR OF SAVANNAH TECH

Savannah Tech

Savannah, Georgia

Winfield H. Haynes, Sr.

having completed the requirements of the Program in

Diesel/Truck Repair Technician

under standards approved by the

Department of Technical and Adult Education

and The Chatham County Board of Public Education is Awarded this

Diploma

April 2, 1991

Date of Award

S. Magrath B. F. F. F.
Secretary, Chatham County Board of Education



Cecil F. Carter
Superintendent of Schools

Billy Fair
President



THE BOARD OF PUBLIC EDUCATION FOR SAVANNAH AND CHATHAM COUNTY

CERTIFICATE OF COMPLETION

THIS CERTIFIES

THAT WHITFIELD H. PAYNE, SR. HAS SATISFACTORILY COMPLETED
80 HOURS IN CUMMIS ENGINE

CONTINUING EDUCATION DIVISION

IN TESTIMONY OF THIS FACT, THE SIGNATURE OF THE EXECUTIVE
DIRECTOR AND THE COORDINATOR OF SAVANNAH TECH ARE HERETO ATTACHED.

THIS SIXTEENTH DAY OF MARCH, ONE THOUSAND

NINE HUNDRED AND EIGHTY-EIGHT

Elizabeth Brown
COORDINATOR

William Payne
EXECUTIVE DIRECTOR OF SAVANNAH TECH

BO-MARK TRANSPORT, INC.

POST OFFICE BOX 682
SAVANNAH, GEORGIA 31402
TERM.: OLD LOUISVILLE ROAD
(912) 964-8620
FAX (912) 964-6312

AUGUST 27, 1993

TO ALL SHOP EMPLOYEES:

WE ARE PROUD TO ANNOUNCE THAT WHITFIELD PAYNE IS NOW OUR NEW ASSISTANT SHOP FOREMAN. HE WILL NOW BE IN CHARGE OF OUR SHOP WHEN BRYAN JONES IS NOT PRESENT.

MR. PAYNE HAS SHOWED A GREAT DEAL OF RESPONSIBILITY IN HIS WORK PRACTICES AND HAS PROVEN HIMSELF AS A GREAT ASSET TO OUR COMPANY. HE IS ALSO GOING TO HEAD OUR QUALITY CONTROL FOR THE SHOP. FROM THIS TIME ON ANY MAJOR REPAIRS ARE TO BE CHECKED OUT BY MR. PAYNE BEFORE THE EQUIPMENT IS TO LEAVE THE SHOP.


JOHN R. PHILLIPS

Bo-Mark

TRANSPORT, INC.

P.O. Box 652
Savannah, Georgia 31402

Watts 1-800-768-7825
Phone 912-964-8620
Fax 912-964-6312

October 26, 1994

Mr. Darrell C. Gregory
Regional Director
Office of Motor Carriers
U.S. Department of Transportation
Federal Highway Administration
1720 Peachtree Road, NW
Atlanta, Ga. 30367

RE: Out Of Service Order No. 94-116

Dear Mr. Gregory,

In response to the above referenced Out of Service Order, I would like to address the following:

Since my last reply in late September, Bo-Mark Transport, Inc. has continued to strive for complete compliance with the FMCSRS.

As I told you in my last letter, we had our mandatory company meeting on October 1, 1994. Each employee was trained on the proper way to keep drivers daily record of duty status and was retrained on all the regulations in order to assure compliance with the FMCSRS. We went over the above order in detail and each employee was given a copy of said order. Each employee also received significant training and documented certification as detailed in the order.

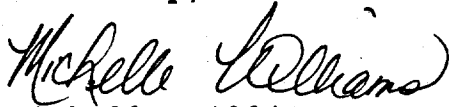
We are still obtaining such reasonable assistance from J.J. Keller and Mr. Bob Wilder with CDS, Motor Carrier Compliance Services, Inc. Mr. Wilder is continuing to review Bo-Mark Transport's policies and procedures set up to assure compliance with applicable Federal Motor Carrier Safety Regulations. He has once again assured us we have the system in place and are utilizing it. Mr. Wilder has requested that logs be regularly sent to him for review. This is being done and we have received favorable results. Mr. Cheshire, our Comptroller, is currently conducting random audits of the driver logs using all supporting documentation available to BTI.

page 2

On October 5, 1994, Rod Kelley, Special Agent with the Department of Transportation conducted a compliance review in which five (5) drivers were picked at random and closely scrutinized for violations pertaining to Hours of Service in Section 395. Of 150 records checked, no violations were found. Special Agent Kelley also checked the Driver Qualification Files finding no violations. Special Agent Kelley did recommend that we post an additional copy of the Order and Conditional Rescission in the hallway near the Safety Directors office. This recommendation was put in place that afternoon. He also recommended we remain consistent with the safety operations currently in place. This recommendation is strictly enforced.

In conclusion, I would like to state that BTI is earnestly is making every effort possible to comply with the provisions of the regulations. I can candidly say that the attitude of Management and drivers has become one of conscientiously making the effort to abide by the FMCSR'S.

Sincerely,

A handwritten signature in cursive script, reading "Michelle Williams".

Michelle Williams
Safety Director

BEFORE THE
FEDERAL HIGHWAY ADMINISTRATION

IN THE MATTER OF:

Bo-Mark Transport, Inc.)	OUT OF SERVICE
4884 Old Louisville Road)	ORDER NO. 94-116
Garden City, Georgia 31410)	

CONDITIONAL RESCISSION OUT OF SERVICE ORDER

The parties to the above-referenced proceeding, the Federal Highway Administration (FHWA) and Bo-Mark Transport, Inc. (BTI), through their undersigned representatives, hereby stipulate and consent to the following conditions in temporary rescission of the Operations Out of Service Order issued pursuant to the Federal Motor Carrier Safety Regulations (FMCSR). This Conditional Rescission is effective upon signature by the Regional Director:

(1) The FHWA shall conditionally rescind the Operations Out of Service Order served upon BTI on September 15, 1994, for a period of thirty (30) days, subject to the following conditions:

(2) BTI shall submit to the Regional Director by close of business on September 26, 1994, a statement under 28 U.S.C. § 1747 by John D. Phillips or an authorized representative accounting for each BTI vehicle in interstate commerce on September 15, 1994. The statement shall identify the BTI vehicle by driver, terminal of origin, destination, unit number, cargo manifest, bill of lading.

(3) BTI shall also submit a similar statement describing what efforts were taken to place each BTI vehicle out of service after service of the Operations Out of Service Order.

(4) Further, the statement shall identify the person and the means by which John D. Phillips or other person(s) acting at his

direction notified each BTI terminal or customer, the instructions given, to whom, the BTI vehicles at each terminal, and the present location of each BTI vehicle.

(5) The statement shall also identify any BTI vehicle dispatched in interstate or intrastate commerce or allowed to continue in interstate commerce after service of the Operations Out of Service Order; identifying the unit number, driver, manifest, bill of lading, cargo, destination, date of and time of dispatch, date and time of delivery, and person(s) responsible for the dispatch. Original unaltered trip documents must accompany this statement.

(6) During the thirty day period, BTI shall obtain such reasonable assistance from the American Trucking Association, J. J. Keller and Associates, Georgia Motor Trucking Association or other experienced person or industry association as may be necessary to review BTI's policies and procedures for compliance with the Applicable Federal Motor Carrier Safety Regulations.

(7) BTI shall utilize the following trip documents: Log books, Log or Trip Envelopes, Driver's Hours of Service Fact Sheets, Driver's Relief of Duty Forms or Sheets. Trip documents shall also include toll tickets or receipts, gasoline purchases receipts, traffic citations, bills of lading, manifests - showing unit number, driver, date and hour of dispatch, dispatcher, date and hour of return, date trip documents tendered, date reviewed, reviewer, corrective action taken, if any. Each driver shall utilize the above-described trip documents. Trip documents shall

be reviewed by the Safety personnel and continued eligibility determined prior to dispatch. All entries on each trip document must be retained unaltered.

(8) BTI shall immediately establish and implement a system to control and ensure compliance with the hours of service requirements as set forth in 49 C.F.R. § 395.3. Such system shall include a dispatch program that monitors driver's hours on a daily basis, including requiring drivers to call in to the main dispatcher at least once every 24 hours during fueling to advise on the total number of on-duty and driving hours available and the number available for ensuing days. BTI will implement a system to verify the accuracy of the driver's hours of service and the location at the time of the daily calls to dispatch. Records shall be maintained showing dates, times and locations, by city and state, of driver's telephonic reports and the hours reported by the driver. These records will be made accessible for inspection and retained for a period of six (6) months. Drivers shall not be dispatched unless they retain adequate and available on-duty and driving time, pursuant to 49 C.F.R. § 395.3, to complete their assigned run.

(9) BTI shall dedicate such additional employees to the safety department and ensure that the sole duties of this department's employees will be to ensure and monitor compliance with the FMCSR, 49 C.F.R. Part 387, et seq. (regulations). The persons employed in such department shall be knowledgeable and conversant in the regulations and able to monitor the BTI's

compliance. BTI shall submit within five (5) business days the names, employment/training histories, duties, and supervisory authority of any BTI employee assigned to the Safety and Dispatch Departments.

(10) BTI will designate and empower at its principal office in Savannah, Georgia, a qualified individual with sufficient staff authority under the direct supervision and control of the Chief Executive Officer (CEO) to assure compliance with all regulations pertaining to motor carrier safety and hazardous materials transportation. The name of the designee will be provided to FHWA in writing promptly after the execution of this Order.

(11) All drivers, dispatchers and other employees responsible for compliance with the FMCSR shall receive, biannually, sufficient levels of training to be knowledgeable of the regulations, including, but not limited to, proper preparation of the driver's daily records of duty status, hours of service requirements under 49 C.F.R. § 395.3, qualifications of drivers and equipment, as well as other provisions of the regulations. Total training required to subject personnel will amount to a minimum of ten (10) hours annually.

Each training session will be documented and will include date of training, subjects discussed, length of meeting, and the employee's signature verifying receipt of training. All records of individual driver training will be maintained in the respective driver's qualification file or personnel file with respect to non-drivers. The training program will be so constructed that a

minimum of at least five (5) subject employees will receive training each month until all training is completed.

(12) In addition to the aforementioned training, all current and newly hired drivers must receive supplemental training prior to their first dispatch. This supplemental training will consist of instructions on the proper and accurate completion of the driver's record of duty status, the company policy with regard to falsifying a record of duty status, and the hours of service limitations. No driver will be eligible for a dispatch until this initial training is accomplished. Documentation of this training is required as described above.

(13) Upon completion of the biannual driver training as described above, the driver shall receive a certificate showing the dates the training was received and the hours for each session, and such certificate shall be signed by the BTI's Safety Director with a certification that the training was provided to and received by the driver. The certificate of training shall be maintained in the driver qualification file of each driver employed or used by BTI.

(14) BTI will require all drivers to prepare complete and accurate daily records of duty status for each twenty-four period and submit them to BTI within thirteen (13) days or at the end of each trip, whichever is first. All records of duty status shall be maintained at the principal place of business along with all supporting documents for a period of six (6) months. Such supporting documents shall be attached to and maintained on file with the record of duty status or time record, if applicable, to

which it relates. All records will be retained for a minimum period of six (6) months.

(15) A competent designee shall verify the accuracy of all driver's records of duty status by checking supporting documents against the duty status records. This review will be accomplished prior to the driver's next dispatch. BTI will immediately establish and implement a disciplinary program which will prohibit the falsification of the record of duty status. This policy shall be in writing and prominently displayed at BTI's place of business, as well as all terminals operated by BTI. Additionally, all drivers shall be personally furnished two copies of the policy, one to be signed by the driver and placed in his/her driver qualification file, the other to remain with the driver. Any disciplinary action taken against a driver pursuant to the policy and program shall be documented in the driver's qualification file. BTI disciplinary program must, at a minimum, provide for a verbal warning after the first violation, a written reprimand for the second offense, a suspension for the third, and termination for the fourth violation. . Violations, for purposes of this disciplinary program, shall include falsification of records of duty status as well as exceeding the hours of service limitation as defined in 49 C.F.R. § 395.

(16) BTI shall comply with all Federal Motor Carrier Safety Regulations and shall certify on a monthly basis compliance with the provisions of the regulations and this Order. The certification shall be forwarded to the Regional Director, Office

of Motor Carriers, Atlanta, Georgia, and shall include such proof of compliance as the Regional Director deems necessary.

(17) BTI shall inform all of its employees in writing of the terms of this Order and Conditional Rescission and shall post large, permanent notices at all locations readily visible to all employees that it is BTI's policy to comply fully with the FMCSR, the Hazardous Materials Regulations and this Order and that failure of any employee to comply fully with the FMCSR or the terms of this Order shall be cause for disciplinary action. Such notices shall also include a statement that complaints of violations of this Order may be made to the Regional Director, Region 4, Office of Motor Carriers, 1720 Peachtree Road, N.W., Suite 221, Atlanta, Georgia 30367 (telephone number 404-347-4049).

(18) This Conditional Rescission is effective for thirty (30) days beginning upon execution by the Regional Director. After thirty (30) days, a Consent Order may be entered if the Conditional Rescission is not extended. Any Order has, however, the same force and effect, as a final order, and may be modified, altered, or set aside in the same manner as other orders issued under 49 C.F.R. App. 501, et seq., 2501 et seq., 3101 et seq., and 10927, Note. Modification or other relief of this Order or any other order shall be dependent upon BTI's progress in achieving and maintaining a satisfactory safety rating and establishing compliance with all applicable Federal regulations.

(19) BTI acknowledges it has received adequate notice of the Administration's actions in this matter and waives any and all

rights it may have to further details relating to the violations which gave rise to the Out-of-Service Order, including a decision and order containing findings of fact and conclusions of law, and any right to seek judicial review or otherwise contest or challenge the validity of this Order.

(20) BTI acknowledges that unannounced on-site verifications of BTI's operation will be conducted and that a bad faith failure to comply with the provisions of this Order or the Federal Motor Carrier Safety Regulations will result in a revocation of the Conditional Rescission of the Out-of-Service Order and reinstitution of the Order. BTI also acknowledges that failure to comply with the Out-of-Service Order may result in civil penalties of up to \$10,000 each day that the operation continued after the Order was served and failure to abide by the terms of this Order may subject BTI to additional civil penalties.

(21) BTI warrants that it has taken all steps in good faith to honor the Out-of-Service Order served on September 15, 1994, 10:00 a.m. after notice of the Order was conveyed to the terminals on September 15, 1994. BTI understands and acknowledges that if the Regional Director determines that equipment was intentionally dispatched in interstate commerce after service of the Out-of-Service Order and before Conditional Rescission by the Regional Director, the Out-of-Service Order shall be reinstated in full and BTI must cease all interstate operations immediately upon notice. The rights of BTI and the Regional Director shall be as if this Conditional Rescission was not entered.

(22) At such time as a drug test is ordered on any driver, the Safety Department will so advise dispatch and the said driver will then be out of service until such time as a negative drug test result is received and the safety Department advises dispatch in writing of the receipt of such negative result.

(23) All local trips for drivers will be included in their logs and taken into account by BTI in determining available hours of service.

(24) BTI management will maintain a respectful attitude towards FHWA officials at all times.

(25) BTI will staff its Maintenance Department with a FMCSR qualified Maintenance Director.

FOR BO-MARK TRANSPORT, INC.


JOHN M. PHILLIPS
President

9/16/94
Date

FOR THE FEDERAL HIGHWAY ADMINISTRATION

DARRELL C. GREGORY
Regional Director
Office of Motor Carriers

Date

Time

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FOR BO-MARK TRANSPORT, INC.

JOHN D. PHILLIPS
President

Date

FOR THE FEDERAL HIGHWAY ADMINISTRATION


DARRELL C. GREGORY
Regional Director
Office of Motor Carriers

9-16-94
Date

3:02 PM EDT
Time

BEFORE THE
FEDERAL HIGHWAY ADMINISTRATION

In the Matter of	:	
	:	
OLIN WOOTEN TRANSPORT CO., INC.,	:	Docket No. 92-GA-050-SASV
	:	Docket No. GA-93-045-449
Respondent	:	
	:	

ORDER APPOINTING ADMINISTRATIVE LAW JUDGE

The matter before me encompasses two notices of claim and two motions for final order against Olin Wooten Transport Company, Inc. This proceeding is governed by the rules of practice in 49 C.F.R. Part 386.

The first notice of claim was issued on June 2, 1992. Respondent Olin Wooten Transport was charged with seventy-two (72) violations of the Federal Motor Carrier Safety Regulations (FMCSRs) and assessed a penalty of \$48,500. Respondent replied by counsel on July 2, 1992, requesting a hearing. Wooten Transport admitted some of the charges, denied others, and suggested that further research in the carrier's files would invalidate some of the counts charged by the Regional Director. The second notice of claim was issued on February 26, 1993. It charged Respondent with thirty-one (31) violations of the FMCSRs and assessed a penalty of \$39,000. Wooten Transport replied pro se on March 17, 1993, requesting a hearing. Respondent admitted some of the counts, disputed a few, and asked the Federal Highway Administration (FHWA) to return a computer printout generated at the request of the FHWA investigator during the compliance review

which the company was later unable to reproduce. Respondent stated that it wished to check certain facts listed on the printout before commenting on a number of the charges.

A motion for final order applicable to both claims was filed on August 3, 1993, and amended on August 18, 1993. Because he had dropped several counts, the Regional Director requested an order directing Respondent to pay a total penalty of \$85,000. The Regional Director argued that Wooten Transport's responses were either bare denials or evidence of post facto efforts to improve compliance, and that there were no factual issues in dispute.


Wooten Transport replied by counsel on August 13, 1993, that certain factual issues remained in dispute. Respondent also argued that some of the determinations underlying the Regional Director's penalty assessment -- for example, that the carrier's culpability was high -- were factual in nature.

The parties' contradictory arguments cannot readily be resolved on the basis of the documentary record before me, voluminous though it is. I am therefore appointing an Administrative Law Judge to clarify the points on which the parties agree and disagree, to resolve evidentiary disputes that have not been settled, to decide any material factual issues which may emerge from that process, and to issue a recommended decision. Although previous decisions hold that the amount of the penalty assessed by the Regional Director is not a material factual issue in dispute [see the order appointing an

Administrative Law Judge In the Matter of Drotzmann, Inc. (Docket No. R10-89-11), September 20, 1989, published at 55 Fed. Reg. 2929, January 29, 1990], I am particularly interested in a discussion of Respondent's argument that the process by which the penalty is assessed rests on factual findings susceptible to challenge.

IT IS HEREBY ORDERED that Olin Wooten Transport's request for a hearing is granted. In accordance with 49 C.F.R. § 386.54(a), I hereby appoint an Administrative Law Judge, to be designated by the Chief Administrative Law Judge of the Department of Transportation, as the Presiding Judge in this matter. The proceeding shall be governed by Subparts D and E of 49 C.F.R. Part 386 and all orders issued by the Administrative Law Judge.

Date: JUN 18 1994


George L. Reagle
Associate Administrator

CERTIFICATE OF SERVICE

This is to certify that on the 17th day of June, 1994, the undersigned mailed or delivered, as specified, the designated number of copies of the foregoing document to the parties listed below.

Ms. J. Renee Kastanakis
Attorney for Respondent
Carr Tabb and Pope
1355 Peachtree Street NE
Suite 2000
Atlanta, GA 30309

One Copy
U.S. Mail

Mr. James C. Thomason III,
Regional Counsel
Ms. Kristina Alexander,
Assistant Regional Counsel
Federal Highway Administration
1720 Peachtree Road, N.W.
Atlanta, GA 30367

One Copy
U.S. Mail

Motor Carrier Safety Docket Clerk
HCC-20, Room 4224
Federal Highway Administration
400 7th Street, SW
Washington, DC 20590

One Copy
Personal
Delivery

April L. McCray

U.S. DEPARTMENT OF TRANSPORTATION
OFFICE OF HEARINGS
WASHINGTON, D.C.

SERVED OCT 5 - 1994

OLIN WOOTEN TRANSPORT CO., INC.

FHWA DOCKET NOS. 92-GA-050-SASV and
GA-93-045-449
(Motor Carrier Safety)

ORDER DENYING MOTION FOR SUMMARY JUDGMENT

By motion dated September 15, 1994, Complainant has moved for a summary judgment in these matters on the ground that there are no material facts which are in dispute in these matters and that Complainant is thus entitled to summary judgment as a matter of law. Respondent has replied in opposition to the motion.

The pleadings of the parties, including a joint procedural schedule and statement of the issues dated July 26, 1994, indicate that of the 93 charges cited in the two Notices of Claim involved in these matters, only 2 charges (charge 16 of Docket No. 92-GA-050-SASV, and charge 29 of Docket No. GA-93-045-449) remain at issue. Respondent has admitted to the other violations. The only other possible issue to be heard in these matters is that of the appropriate civil penalty to be assessed. It is Complainant's position that there are no material facts in dispute as to these issues and that it is thus entitled to a summary judgment. Respondent on the other hand urges that there are substantial material issues in dispute as to each of these issues.

In a motion for summary judgment the moving party must show that no genuine issue of material fact exists. In the matter of Fikse & Company, 58 Fed. Reg. 16946, 16947, May 12, 1992. Moreover, in deciding whether a genuine issue of material fact remains I must give the opposing party the benefit of any doubt as to the sufficiency of the movant's factual showing. Laxon Corp. v. Federal Trade Commission, 663 F.2d 120, 126 (D.C. Cir. 1980). With this standard in mind, I have reviewed the three above issues hereinbelow and find that Complainant's motion must be denied.

Charge 16 of Dkt. No. 92-GA-050-SASV. Charge 16 alleges that Respondent failed to file an accident report in connection with an accident occurring on April 1, 1991, and that such failure was a violation of 49 CFR §394.9(a), which regulation was in effect at that time. Section 394.9(a) required an accident report to be filed "Within 30 days after a motor carrier learns or should have learned that a *reportable accident* occurred...." (Emphasis added). A "reportable accident" was defined in 49 CFR §349.3(a)(3) as one

resulting in "Total damage to all property aggregating \$4,400 or more based upon actual costs or *reliable estimates*. (Emphasis added).

In support of the motion, Complainant cites to Respondent's own internal records as showing damage to its vehicle totaling \$2,430.99 and an affidavit of FHWA Investigator Hartley that in a telephone call to the other trucking company involved in the accident he was informed that its truck suffered damages in the amount of \$3,885.23. Respondent in support of its opposition to the motion cites to the affidavit of one of its Safety Department employees to the effect that based upon substantial experience in the investigation and reporting of truck accidents, and his investigation which consisted of reviewing the police report, interviewing the driver, and inspecting the damage to Respondent's trailer, he made what he considers to be a reliable estimate that the total property damage resulting from the accident was \$4000.00.

In view of the fact that Investigator Hartley's report of his telephone conversation with the trucking company owning the other truck in this accident entails hearsay evidence which can only be properly weighed after hearing and cross examination, Complainant's evidence supporting this charge appears to be somewhat in dispute. This is especially so in light of Respondent's opposing evidence concerning the internal estimate made by its safety employee at the time of the accident. Although the latter affidavit is also undoubtedly subject to attack at the hearing, I note that Section 394.3 only requires a *reliable estimate* of damages in a case such as this. It does not require a determination of the *actual costs*. Thus, again, there is an issue to be heard concerning whether under the circumstances involved with this accident the estimate by Respondent's safety employee could be considered a *reliable estimate* in accordance with the regulation.

Under these circumstances a motion for summary judgment will not lie as to this charge.

Charge 29 of Dkt. No. GA-93-045-449. This charge alleges that a driver for Respondent, one James A. Phillips, made false entries in his record of duty status. According to Complainant, driver Phillips' log is falsified for the date of December 11, 1992. Complainant cites to the affidavit of Investigator Hartley to show that driver Phillips was transporting property from Homerville, Georgia to Houston, Texas on or about December 11, 1992, whereas driver Phillips' record of duty status for December 11 and December 12, 1992 indicates that this driver was off duty in Westville, Florida on those dates.

Respondent admits that a check call sheet for this driver shows the driver to be in Homerville, Georgia at 10:01 a.m. on December 11, 1992. However, Respondent has provided an affidavit of Mr. Phillips stating that the check call is incorrect in showing that he was in Homerville, Georgia at that time and that, in fact, he was in Westville, Florida. The affidavit states that at the time he made the check call he advised the company that he had left his truck in Homerville and rode to Westville with his wife.

Complainant urges in response to this affidavit that it does not support the documentary evidence that driver Phillips prepared at the time of the logs. Those logs show him leaving the tractor-trailer in Westville. (Attachment to Hartley affidavit).

The evidence produced by the parties in support of their respective positions certainly indicate error of some sort. Respondent urges that the error is in the check call sheet and not in the record of duty status. Complainant cites to apparent discrepancies between Mr. Phillips' affidavit and the driver's log entries as evidence that the logs contain false entries. It appears that live testimony from these witnesses concerning the events in question and the driver's log entries and check call records would be essential to a determination of where the error existed. Accordingly, I find a material issue to be in dispute as to this charge also.

The assessment of penalties. Complainant argues that the issue of severity of the fines does not raise a material factual issue in dispute, citing to In the matter of R.M. Black, Jr. Produce, Inc., Docket No. 90-AL-021-SA (March 11, 1992). Complainant also urges that only mitigating factors that existed at the time of the investigation can be taken into account in reducing a civil penalty. It is Complainant's position that all relevant factors were taken into account at the time the penalty was assessed and that, therefore, the requested civil penalty must be considered appropriate.

Respondent on the other hand urges that FHWA's penalty assessment worksheets for both the 1992 and 1993 audits underlying these cases reflect numerous factual determinations made by the auditors which are in conflict with facts previously submitted by Respondent in these matters. It is alleged that the auditors failed to take into account steps Respondent has taken both before and after the 1992 audit to ensure compliance with safety regulations. It is also argued that the 1993 audit relied on a factual determination that Respondent had a "callous attitude," when the affidavit of Robert L. Joyce, Jr. indicates that at the end of the 1993 audit the auditors had praised Wooten for the actions it had taken in response to previous audits.

Despite Complainant's position that the amount of the penalty is not a material factual issue in dispute, the Associate Administrator in his Order Appointing Administrative Law Judge stated that he was "particularly interested in a discussion of Respondent's argument that the process by which the penalty is assessed rests on factual findings susceptible to challenge." Thus, it appears that this was the one issue which was particularly set out in that order to be decided in a hearing of these cases.

Moreover, it is clear from a review of past cases that not only may the issue of the amount of the penalty be revisited in any hearing in such cases, but that facts occurring after the investigation may be taken into account in assessing the appropriate penalty. In The matter of Drotzmann, Inc., 55 Fed. Reg. 2929, 2930 (September 20, 1989), the Associate Administrator made it clear that neither he, nor the Administrative Law Judge

were restricted in their ability to change the penalty assessed. In fact, it is stated therein that "the Judge is free to recommend a penalty modification based on the findings made in the case," citing to In the matter of Empire Gas, R1-87-87 (Feb. 24, 1989). Furthermore, the Associate Administrator himself has considered possible improvements in a safety program, made after the investigation, in connection with his reduction of the civil penalty. In the matter of Tonawanda Tank Transport Service, Inc., 55 Fed. Reg. 43279 (July 5, 1990).

Accordingly, I find that there remains a material issue of fact to be heard concerning the manner in which the penalty was assessed in these cases.

Complainant's motion for summary judgment is therefore denied.

So Ordered.


John J. Mathias

Chief Administrative Law Judge

Attachment - Service List.

FHWA Docket No. GA-92-050-SASV

FHWA Docket No. GA-93-045-449

SERVICE LIST

One Copy

Motor Carrier Safety Docket Clerk
Federal Highway Administration
Room 4224, HCC-20
400 Seventh Street, S.W.
Washington, D.C. 20590

J. René Kastanakis, Esq.
Carr, Tabb & Pope
Suite-2000
1355 Peachtree Street, N.E.
Atlanta, Georgia 30309
COUNSEL FOR RESPONDENT

Telephone 404-876-7790
Facsimile 404-873-4683

James C. Thomason III
Regional Counsel
Kristina Alexander
Assistant Regional Counsel
Federal Highway Administration
Suite 200
1720 Peachtree Road, N.W.
Atlanta Georgia 30367
COUNSEL FOR REGIONAL DIRECTOR
REGION 4, OFFICE OF MOTOR CARRIERS

Telephone 404-347-4990
Facsimile 404-347-1568

Two Copies

The Honorable John J. Mathias
Chief Administrative Law Judge
Office of Hearings
Room 9228, M-50
U.S. Department of Transportation
400 Seventh Street, S.W.
Washington, D.C. 20590

Telephone 202-366-2142
Facsimile 202-366-7536

In the Matter of :
:
BO-MARK TRANSPORT, INC. : Case No. GA-94-111-566
Respondent. :

Motor Carrier Docket Clerk (2 copies)
FHWA
400 7th Street, SW
Washington, DC 20590

Mr. Darrell C. Gregory
Regional Director, Office of Motor Carriers
Federal Highway Administration
1720 Peachtree Road, Suite 200
Atlanta, GA 30367

This the 4th day of March, 1996.

CARR, TABB & POPE

BY: J. Renee Kastanakis
J. Renee Kastanakis
Georgia Bar No.: 408599

ATTORNEY FOR RESPONDENT

1355 Peachtree Street, N.E.
Suite 2000
Atlanta, Georgia 30309
(404) 876-7790
FAX (404) 873-4683